

EXHIBIT I

In the Matter of:

JEFFREY HEITZENRATER

v.

OFFICEMAX INCORPORATED, et al

JEFFREY HEITZENRATER

March 21, 2013



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<p style="text-align: right;">Page 162</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 and were close to, you know, us.</p> <p>3 Josh, as the store manager, did, you know,</p> <p>4 compete at it and did very well too. So overall</p> <p>5 everybody was -- were good sellers.</p> <p>6 Q. Were there ever any occasions when you</p> <p>7 lowered the price on an item so that you could incent</p> <p>8 the sale of the MaxAssurance?</p> <p>9 A. Not that I recall. I've heard of it being</p> <p>10 done before, but not that I recall, no.</p> <p>11 Q. You did it, didn't you?</p> <p>12 MR. PALITZ: Objection.</p> <p>13 Q. You did it, didn't you?</p> <p>14 A. I don't think so. Not that I recall.</p> <p>15 Q. As a manager, did you have authority to do</p> <p>16 price overrides?</p> <p>17 A. We had authority, as well as the ImPress</p> <p>18 supervisor and operations manager too, yes.</p> <p>19 Q. What's a price override?</p> <p>20 A. It's when you lower the price of a product</p> <p>21 due to customer satisfaction or, you know, a product's</p> <p>22 defective or not defective but has a scratch on it or</p> <p>23 something, or it might be a display item, you know,</p> <p>24 then we could discount the price. Absolutely.</p> <p>25 Q. Or a customer might say, "Well, Staples</p>	<p style="text-align: right;">Page 164</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 wouldn't it?</p> <p>3 A. Right. I would assume. It's against my</p> <p>4 integrity.</p> <p>5 Q. Was your first month of work spent being</p> <p>6 trained at Store 107?</p> <p>7 A. In Victor, New York.</p> <p>8 Q. Yeah. And training store manager there is</p> <p>9 Don Scalice?</p> <p>10 A. That is correct.</p> <p>11 Q. How long did you train at Don Scalice's</p> <p>12 store?</p> <p>13 A. Three weeks or four weeks. Something like</p> <p>14 that. I don't recall exactly.</p> <p>15 Q. What do you recall about the training at</p> <p>16 that store?</p> <p>17 A. I recall a lot of computer work like --</p> <p>18 like corporate would send down tests, like you'd watch</p> <p>19 video or go through a thing, then take a test on it.</p> <p>20 I recall unloading trucks with Don with a</p> <p>21 forklift. I recall gathering in the morning. I'd</p> <p>22 meet him there, and we would walk around the store</p> <p>23 with a Telxon gun, which is like an inventory scanner,</p> <p>24 and we would scan all the empty holes and down stock</p> <p>25 and fill products.</p>
<p style="text-align: right;">Page 163</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 has that for lower than OfficeMax. Can you match</p> <p>3 that?"</p> <p>4 A. Price match.</p> <p>5 Q. You could do that?</p> <p>6 A. There were lots of different reasons for</p> <p>7 it.</p> <p>8 Q. Or a customer might say, "Hey, the sign on</p> <p>9 the counter says that these are 79.99. Don't tell me</p> <p>10 it costs 89.99. I want the advertised price on the</p> <p>11 counter." You'd have the ability to make it right</p> <p>12 with a customer, wouldn't you?</p> <p>13 A. It was very rare, but there was a</p> <p>14 possibility of that, sure.</p> <p>15 Q. I mean, that was part of your job to</p> <p>16 resolve those issues, wasn't it?</p> <p>17 A. Included with others, yep.</p> <p>18 Q. And were there times when you used your</p> <p>19 authority to lower the price so that you could say to</p> <p>20 the customer, "I can get you this at a lower price so</p> <p>21 that your MaxAssurance will be almost free"?</p> <p>22 A. No.</p> <p>23 MR. PALITZ: Objection.</p> <p>24 A. Absolutely not.</p> <p>25 Q. That would be against store policy,</p>	<p style="text-align: right;">Page 165</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 I remember spending about a week's time in</p> <p>3 ImPress -- again, that's an estimate -- in ImPress for</p> <p>4 how to print stuff, like, you know, flyers or things</p> <p>5 of that nature.</p> <p>6 What else do I remember?</p> <p>7 Q. Is ImPress -- just for the record, Impress</p> <p>8 is a department of the store that does print services</p> <p>9 and photocopying and creating documents and graphics;</p> <p>10 right?</p> <p>11 A. Sure.</p> <p>12 Q. Yeah. It's like its own business within</p> <p>13 the OfficeMax store business; right?</p> <p>14 A. Um, I wouldn't say that, because there</p> <p>15 was -- everybody there that worked there would work</p> <p>16 ImPress, you know.</p> <p>17 Q. People would cross train?</p> <p>18 A. Right. They would have to go in there and</p> <p>19 work if the ImPress manager wasn't there.</p> <p>20 Q. Okay. Do you recall anything else about</p> <p>21 your training with Don Scalice -- and I'm going to</p> <p>22 call it Store 107, because I forget the name of the</p> <p>23 city.</p> <p>24 A. Victor.</p> <p>25 Q. You told me.</p>

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<p style="text-align: right;">Page 166</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 A. No. Just a real nice guy. I liked Don.</p> <p>3 Q. Did he teach you anything?</p> <p>4 A. Again, we did everything that I'd</p> <p>5 mentioned from my memory recalls.</p> <p>6 Q. Did he talk about management skills and</p> <p>7 assigning work and motivating people and how to be a</p> <p>8 manager?</p> <p>9 A. We spent very little time on that sort of</p> <p>10 stuff, simply because there was so much work to be</p> <p>11 done in the store, such as, you know, like I mentioned</p> <p>12 before, down stocking, scanning holes. I learned how</p> <p>13 to run the register for a few days.</p> <p>14 And, you know, for the time that I was</p> <p>15 there, there just wasn't enough time to go into how to</p> <p>16 be a good manager. That basically came from, you</p> <p>17 know, the computer programs that we did, and there was</p> <p>18 very few of them, you know, on there about that.</p> <p>19 I remember taking a lot of tests about,</p> <p>20 like, the electronics and things of that nature. You</p> <p>21 know what I mean?</p> <p>22 (The following exhibit was marked for</p> <p>23 identification: EXH Number 11.)</p> <p>24 Q. Showing you what's been marked for</p> <p>25 identification as Exhibit 11. This is a, I guess a</p>	<p style="text-align: right;">Page 168</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 I only have 15 days on there. Oh, there's 20.</p> <p>3 Yeah, I don't really remember. I just</p> <p>4 remember him saying, "Okay. Have fun." Then I left</p> <p>5 and went to the other store.</p> <p>6 (The following exhibit was marked for</p> <p>7 identification: EXH Number 12.)</p> <p>8 Q. I'm showing you what's been marked for</p> <p>9 identification as Exhibit 12. This is a big thick</p> <p>10 packet of paper called Retail Management Training</p> <p>11 Participant Guide, OfficeMax University.</p> <p>12 And were you provided with one of these</p> <p>13 critters as part of your training?</p> <p>14 A. Yes. Yep.</p> <p>15 Q. And I take it you went through it and he</p> <p>16 went through it?</p> <p>17 A. We would go through it day to day and</p> <p>18 pages at a time, sure.</p> <p>19 Q. And to the best of your knowledge did he</p> <p>20 cover all the stuff in here?</p> <p>21 A. Well, again, not all of it. We did skip</p> <p>22 over some of it simply because it didn't serve a</p> <p>23 purpose or felt like it wasn't important. But I don't</p> <p>24 remember what there was that we did skip over.</p> <p>25 Q. Okay. But it was all there as a resource</p>
<p style="text-align: right;">Page 167</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 four-page document that purports to be a management</p> <p>3 training calendar, external hire. And it kind of lays</p> <p>4 down different topics that are covered on a 20-day</p> <p>5 training period.</p> <p>6 A. It was only 20 days? I thought it was</p> <p>7 longer than that. Yeah, that's four weeks. Yeah.</p> <p>8 Q. Did your training more or less follow this</p> <p>9 calendar?</p> <p>10 A. Yeah. Don was very, very good about, you</p> <p>11 know, the calendar we used. I believe this is the</p> <p>12 same one.</p> <p>13 Q. Okay. And were there any topics that he</p> <p>14 didn't -- on this calendar that he didn't cover with</p> <p>15 you in your training?</p> <p>16 A. I believe there might have been a few that</p> <p>17 were computers, computer programs or something, that</p> <p>18 he said, "You know that already. You don't really</p> <p>19 need to get at it."</p> <p>20 But, you know, for the most part if we</p> <p>21 didn't talk after a long time, we briefly went over</p> <p>22 it.</p> <p>23 Q. That kind of ended with three days of post</p> <p>24 assessment and personalized coaching; right?</p> <p>25 A. Yeah, I guess. I don't really remember.</p>	<p style="text-align: right;">Page 169</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 for you in your training; am I right?</p> <p>3 A. Yeah.</p> <p>4 Q. And I'm not going to go through all of</p> <p>5 this. I do have a few questions.</p> <p>6 Could you turn to page -- when I say page</p> <p>7 number, I'm referring to those Bates numbers.</p> <p>8 A. Oh.</p> <p>9 Q. 5090.</p> <p>10 A. Okay.</p> <p>11 Q. Talks about sales reports. And Don talked</p> <p>12 to you about sales reports, didn't he?</p> <p>13 A. Yeah. He may have went over them briefly.</p> <p>14 Q. And --</p> <p>15 MR. HUTTON: Sorry about that. I'm told</p> <p>16 I'm bumping the microphone.</p> <p>17 Q. And did he talk to you about how to create</p> <p>18 plans to improve the sales performance, the store's</p> <p>19 performance on sales reports?</p> <p>20 A. There was so much in this book, I don't</p> <p>21 personally recall it. But Don, he was quite good with</p> <p>22 going through everything. But I don't remember that</p> <p>23 myself.</p> <p>24 Q. Okay. Page 5097. Remember the daily</p> <p>25 store tour?</p>

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<p style="text-align: right;">Page 178</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 A. It's possible. I don't know though. I</p> <p>3 can't remember.</p> <p>4 Q. Okay.</p> <p>5 A. I don't know what it is now.</p> <p>6 Q. You say you also, in addition to these</p> <p>7 written materials, apparently you watched a bunch of</p> <p>8 videos?</p> <p>9 A. Yeah.</p> <p>10 Q. And Don did a fair amount of, sort of</p> <p>11 on-the-job mentoring with you during that month; is</p> <p>12 that right?</p> <p>13 A. Yeah. Don was always there with me.</p> <p>14 Q. Were there other people besides Don who</p> <p>15 helped to train you to become an assistant store</p> <p>16 manager during that four-week period?</p> <p>17 A. Well, I trained with some cashiers, and I</p> <p>18 trained with the ImPress manager in Victor, and I</p> <p>19 trained with some tech specialists, you know, around</p> <p>20 the Victor store.</p> <p>21 Q. Can you summarize for us what you learned</p> <p>22 from those people or from your training experience?</p> <p>23 A. Well, the girl in Victor -- I can't</p> <p>24 remember her name. She was from a different country.</p> <p>25 I can't remember her name. But she still is, you</p>	<p style="text-align: right;">Page 180</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 could manage others who were doing that job; right?</p> <p>3 MR. PALITZ: Objection.</p> <p>4 A. Possibly.</p> <p>5 Q. Okay. And in other cases it might be</p> <p>6 learning something about OfficeMax's way of doing</p> <p>7 business or the operating procedures and policies and</p> <p>8 protocols; right?</p> <p>9 A. Say that one more time for me, would you?</p> <p>10 Q. Yeah. And perhaps another category of</p> <p>11 training might be learning how OfficeMax did things:</p> <p>12 Protocols, standards, guides, the way in which things</p> <p>13 are done in an OfficeMax store?</p> <p>14 A. Yeah, I mean, the management training</p> <p>15 program that I went through with Don, again, he was --</p> <p>16 followed it very closely.</p> <p>17 Q. And the whole purpose behind all that was</p> <p>18 so that you could then go back to your store and help</p> <p>19 manage it; right?</p> <p>20 A. I mean, I suppose, but, you know, that's,</p> <p>21 you know, not what happened, unfortunately.</p> <p>22 Q. Towards the end of your -- well, what were</p> <p>23 the most important things you learned about managing</p> <p>24 an OfficeMax store from that month of training?</p> <p>25 MR. PALITZ: Objection.</p>
<p style="text-align: right;">Page 179</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 know, when I left, very good at MaxAssurance sales.</p> <p>3 She led the store. And Victor is good at that. So I</p> <p>4 spent some time with her in her training -- not</p> <p>5 training but telling me how she sells MaxAssurance.</p> <p>6 So I guess that might have helped me out in that</p> <p>7 aspect.</p> <p>8 Then I went through the furniture</p> <p>9 department with the furniture specialist and he showed</p> <p>10 me, like, a nightly thing, to clean, you know, to get</p> <p>11 it cleaned up and dust and stuff like that.</p> <p>12 Boy. Where was I even going with this?</p> <p>13 Again, the ImPress guy I spent a few days</p> <p>14 with, week -- I don't know how long it was -- but</p> <p>15 there was a lot of stuff to learn in there, and then a</p> <p>16 day or two on the cash register.</p> <p>17 And then a few days in the cash office</p> <p>18 learning how to close the store, countdown the drawers</p> <p>19 and things of that nature. Unloading a truck,</p> <p>20 checking it in. I don't know. I guess --</p> <p>21 Q. All the kinds of things that were on</p> <p>22 Exhibit 11; right?</p> <p>23 A. Most of them.</p> <p>24 Q. And in some cases those kind of fall into</p> <p>25 the category of learning how a job is done so that you</p>	<p style="text-align: right;">Page 181</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 A. Not real certain. They had, like,</p> <p>3 guidelines. Clean store. I'm sure there is something</p> <p>4 about customer service. It's been so long I hardly</p> <p>5 remember it.</p> <p>6 Q. "Clean, well stocked and customer</p> <p>7 service."</p> <p>8 A. Yeah.</p> <p>9 Q. What does that mean?</p> <p>10 A. Well, again, when we were going around</p> <p>11 scanning the holes, keeping the holes filled.</p> <p>12 Good customer service, you know, if</p> <p>13 there's a person walking around, go greet them rather</p> <p>14 than let them stand there.</p> <p>15 And what was the other one? Clean store.</p> <p>16 Clean everything. Like cleaning the furniture, clean</p> <p>17 the lighting and shelving, you know, shelving that has</p> <p>18 dust on it after time and lights and things of that</p> <p>19 nature.</p> <p>20 Q. It can kind of impact sales if you have a</p> <p>21 clean, receptive place, a store for people to shop in;</p> <p>22 right?</p> <p>23 MR. PALITZ: Object.</p> <p>24 A. From my previous experience at Budget, you</p> <p>25 know, you got to know the background there a little</p>

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<p style="text-align: right;">Page 206</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 A. Right.</p> <p>3 Q. And in round terms, you started working as</p> <p>4 an assistant manager in that store on or about</p> <p>5 February 1st; right?</p> <p>6 A. Yeah, very close.</p> <p>7 Q. And you -- that would be your role for</p> <p>8 about eight and a half months before your resignation;</p> <p>9 right?</p> <p>10 A. Roughly.</p> <p>11 Q. And in that limited time were you</p> <p>12 continuing to learn the job?</p> <p>13 A. In the beginning, you know, when it was</p> <p>14 just me there, I did every effort, you know, to learn,</p> <p>15 to be a good -- hopefully a good assistant manager was</p> <p>16 my goal. So I asked Joe questions when we were doing</p> <p>17 the store walks and stuff about cleaning and things of</p> <p>18 that nature, and why to do it that way. So, you</p> <p>19 know -- and so, yeah, I wanted to.</p> <p>20 And then, you know, when Josh came, I just</p> <p>21 didn't have that ability. You know what I mean? I</p> <p>22 just didn't have that ability to do that.</p> <p>23 Q. And when in that period of time did you</p> <p>24 lose the ability to learn how to do the job?</p> <p>25 A. Well, it wasn't that I lost the ability to</p>	<p style="text-align: right;">Page 208</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 MR. PALITZ: Objection.</p> <p>3 A. I really don't remember that. I don't</p> <p>4 remember that exactly, no.</p> <p>5 Q. Okay. All you know is that you never</p> <p>6 assisted on any performance reviews; right?</p> <p>7 A. I really don't remember that.</p> <p>8 Q. Have you ever heard the expression that</p> <p>9 every day in retail is different?</p> <p>10 A. I don't think so.</p> <p>11 Q. Okay. Is every day in retail a different</p> <p>12 day?</p> <p>13 A. It seemed very monotonous to me as far as</p> <p>14 ongoing same stuff. And like I said before, when I</p> <p>15 had that discussion with Joe, when I was, you know,</p> <p>16 upset and I wanted to find employment elsewhere,</p> <p>17 whatever, you know, I told him, I said, every day is</p> <p>18 down stocking, filling the binder wall, you know, and</p> <p>19 that's what it seemed like to me.</p> <p>20 Q. Okay. Let me ask just a few questions</p> <p>21 about Store 898. I may have covered this and I</p> <p>22 apologize. I try not to be repetitive.</p> <p>23 But what were the annual sales revenues at</p> <p>24 that store?</p> <p>25 A. Yeah. I'm not really 100 percent sure on</p>
<p style="text-align: right;">Page 207</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 learn how to do the job. It was the ability to manage</p> <p>3 the facility is what I lost when Josh came there,</p> <p>4 simply because he had everything set the way he wanted</p> <p>5 and that was it.</p> <p>6 Q. So during your time at an OfficeMax store,</p> <p>7 did you ever work through the holiday season, a</p> <p>8 Christmas season?</p> <p>9 A. Not Christmas. Back to school.</p> <p>10 Q. Okay, which is a busy period at OfficeMax?</p> <p>11 A. I think it's one of the busiest.</p> <p>12 Q. But you didn't work through a holiday</p> <p>13 period, a Christmas period rush, did you?</p> <p>14 A. No. I think Easter was one. Maybe that</p> <p>15 was a holiday. I don't remember. I know there was</p> <p>16 back to school and Christmas and that's what I</p> <p>17 remember.</p> <p>18 Q. And if I'm not mistaken, performance</p> <p>19 reviews at OfficeMax are typically done on a</p> <p>20 particular cycle in January; right?</p> <p>21 A. I don't remember when he did the review or</p> <p>22 whatever.</p> <p>23 Q. Well, did you work at the store at the</p> <p>24 time when reviews were to be done for the associates</p> <p>25 and the hourly employees who worked at that store?</p>	<p style="text-align: right;">Page 209</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 the exact numbers.</p> <p>3 Q. Okay. Was it more or less than three and</p> <p>4 a half million dollars?</p> <p>5 MR. PALITZ: Objection.</p> <p>6 A. Yeah. I'm not real sure. I remember, you</p> <p>7 know -- I think it was two -- I thought, two and</p> <p>8 change, or more than that maybe. But it was just</p> <p>9 brief that we went over it with Josh one time.</p> <p>10 Q. Do you know how the revenues at that store</p> <p>11 compared to other OfficeMax stores?</p> <p>12 A. I know that when I got hired, I believe</p> <p>13 someone had mentioned to me -- and I don't know who</p> <p>14 exactly it was -- but they said it was a smaller</p> <p>15 store.</p> <p>16 Q. How many square feet was the store, if you</p> <p>17 know?</p> <p>18 A. Oh, I have no idea on the square footage.</p> <p>19 Q. Where was the store located, what part of</p> <p>20 Batavia?</p> <p>21 A. What do you mean, like north, east, west?</p> <p>22 Q. Yeah. I don't know Batavia real well. I</p> <p>23 drove by it on the freeway. That's my knowledge.</p> <p>24 A. North I guess it would be.</p> <p>25 Q. What's the neighborhood like in that</p>

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<p style="text-align: right;">Page 222</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 carrier?</p> <p>3 A. Yes.</p> <p>4 Q. And a key carrier is essentially someone</p> <p>5 who has a key to the building and has an alarm code</p> <p>6 and can do the things you just mentioned; right?</p> <p>7 A. Correct.</p> <p>8 Q. In fact, a key carrier can be an MOD;</p> <p>9 right?</p> <p>10 A. Well, the sales supervisor, whatever their</p> <p>11 title. I mean, they changed it again. I don't know.</p> <p>12 But he had a key, you know, and was able to be MOD,</p> <p>13 too, on the --</p> <p>14 Q. On that schedule that we looked at?</p> <p>15 A. Right. Yeah.</p> <p>16 Q. So let's go to that position.</p> <p>17 What are the full-time positions -- and by</p> <p>18 the way, the op supervisor was a full-time job; right?</p> <p>19 A. Right.</p> <p>20 Q. What other full-time positions existed in</p> <p>21 the store?</p> <p>22 A. Well, there was a tech specialist and a</p> <p>23 furniture specialist, ImPress manager, and I think</p> <p>24 that's it. I mean, I can't remember anything else.</p> <p>25 Q. And the tech specialist and furniture</p>	<p style="text-align: right;">Page 224</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 goals were to oversee sales, focus on selling of</p> <p>3 electronics and things like that.</p> <p>4 Q. Or furniture?</p> <p>5 A. From my knowledge, and, again, I don't</p> <p>6 remember it's been so long. But then, again, they're</p> <p>7 also stocking the store and making, you know, the,</p> <p>8 quote, unquote, "goals" or achievements that they call</p> <p>9 it at OfficeMax. Full stocked. Clean.</p> <p>10 Q. Okay. Then the ImPress supervisor, what</p> <p>11 did the ImPress supervisor do?</p> <p>12 A. Did -- he, you know, managed his ImPress</p> <p>13 department. Basically did all the printing, dealing</p> <p>14 with customers, pricing. Pretty much everything to do</p> <p>15 with ImPress when he was there.</p> <p>16 Q. Okay. Also a full-time job?</p> <p>17 A. Full time.</p> <p>18 Q. And also a key carrier; right?</p> <p>19 A. Our store I don't think he was. I don't</p> <p>20 think they -- they were working on it.</p> <p>21 Q. Then underneath those were part-time</p> <p>22 employees; right?</p> <p>23 A. Well, they -- some of them, I think, work</p> <p>24 full time.</p> <p>25 Q. Okay. And what was the title under the</p>
<p style="text-align: right;">Page 223</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 specialist all kind of later became known as a sales</p> <p>3 specialist; right?</p> <p>4 A. I think it was -- don't quote me on</p> <p>5 this -- I think it was demotion to go from a tech</p> <p>6 specialist to a sales specialist. I think it was a</p> <p>7 demotion, but I'm not positive.</p> <p>8 Q. Okay.</p> <p>9 A. Because a tech specialist and a furniture</p> <p>10 specialist had keys to get in and out of the store and</p> <p>11 open and close. The sales specialist now only has</p> <p>12 keys to lock up. When they make a sale of a computer,</p> <p>13 they go in and get it out.</p> <p>14 Q. I think the term they use for that is an</p> <p>15 internal key carrier.</p> <p>16 A. Okay.</p> <p>17 Q. As opposed to like an external key</p> <p>18 carrier, meaning a key that let's you into the store</p> <p>19 when it's locked up at night?</p> <p>20 A. That is right.</p> <p>21 Q. So what did these tech specialists and</p> <p>22 furniture specialists and sales specialists do?</p> <p>23 A. What was their function at the store? As</p> <p>24 I said, I mean, basically the ops manager was the same</p> <p>25 exact thing that I did. The sales specialist, their</p>	<p style="text-align: right;">Page 225</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 people that we've mentioned? Were they all called</p> <p>3 associates?</p> <p>4 A. I'm not really 100 percent sure. Sales</p> <p>5 associates maybe.</p> <p>6 Q. And what did the associates in the store</p> <p>7 do?</p> <p>8 A. Everything everyone else did. You know,</p> <p>9 whatever we were doing, you know, stocking, cleaning,</p> <p>10 changing price tags, filling holes, you know, top</p> <p>11 stocks, like straightening them and things like that.</p> <p>12 We'd all ImPress as well. You know, if the ImPress</p> <p>13 manager wasn't there, we'd have to work that.</p> <p>14 Cleaning, just stuff like that I guess.</p> <p>15 Q. Okay. Essentially, whatever they were</p> <p>16 assigned to do; right?</p> <p>17 A. I mean, everyone basically that was there</p> <p>18 knew what they had to do. Know what I mean?</p> <p>19 Q. So about how many part-time associates</p> <p>20 worked in the store?</p> <p>21 A. I wouldn't remember the exact number. I</p> <p>22 have no idea. I didn't count them at any given time,</p> <p>23 so I'm not 100 percent sure.</p> <p>24 Q. Do you feel comfortable going with a</p> <p>25 number that you had in your LinkedIn, which was 25?</p>

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1 JEFFERY HEITZENRATER - BY MR. HUTTON
2 had our ups and downs. I wouldn't say that, you know,
3 I'm upset at Josh or anything like that after leaving
4 the company.
5 But, you know, I think, you know, we went
6 in there to buy a computer from OfficeMax when we
7 started our business 'cause, you know, I figured I
8 don't have really anything too terrible against them,
9 other than the fact of working lots of hours, so I'll
10 throw them some business. And so we went in there
11 and, you know, he wouldn't even say hello. So at that
12 point I knew that he didn't -- you know, he walked
13 right by me and didn't look at me. So I knew at that
14 point, prior to the lawsuit -- prior -- he didn't like
15 me, so...
16 Q. Did he ever give you any feedback on your
17 performance good or bad?
18 A. Not that I recall other than he did a
19 review on me just recent after he got there, I think
20 or, you know, a second one or, however. I don't
21 remember. But I think that, you know, the review was
22 somewhat good.
23 Q. That would have been what they call a
24 quarterly review?
25 A. Sure.

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1 JEFFERY HEITZENRATER - BY MR. HUTTON
2 Q. Right?
3 A. Sure.
4 Q. Okay. Did he give you any formal or
5 informal feedback about the amount of time that you
6 were spending in the office when he wasn't working?
7 A. I don't believe so.
8 Q. Did you spend a lot of time in the office
9 during the workday?
10 A. Um, not any more than anybody else did.
11 Q. How much time is that?
12 A. Well, a lot of my time was spent out on
13 the floor doing work. You know, very rarely, if Josh
14 didn't complete the schedule or something like that,
15 I'd have to go in there and kind of learn it by the
16 seat of my pants. So it would take a little bit of
17 time to get the schedule put together. And then the
18 next day he'd come in and change the whole entire
19 thing after I invested tons of time in doing it.
20 Q. So you would work on the schedule in the
21 office. What other kinds of work would you do in the
22 office?
23 A. Printed planograms, because Josh created a
24 planogram file so the associates could come in the
25 office and get a planogram and go do it.

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1 JEFFERY HEITZENRATER - BY MR. HUTTON
2 Q. That doesn't take long though.
3 A. They're like 30 pages long and there's 70
4 of them a week. So, yeah, they're pretty long.
5 Updating the sales board. MaxAssurance.
6 Q. When you say "updating the sales board,"
7 what does that mean?
8 A. There's a MaxAssurance board that we had
9 in there that was created by our ImPress department,
10 and it basically just said everybody's name and then
11 it had their MaxAssurance sales percentage next to it.
12 Q. So you would track sales statistics for
13 each associate on MaxAssurance?
14 MR. PALITZ: Objection.
15 A. MaxAssurance, yes. Yeah.
16 Q. And you would post that on a board in the
17 office?
18 A. Right. Whoever was the, you know, the
19 person there would do it every day.
20 Q. And what other work did you do in the
21 office?
22 A. I don't really remember. It was so long
23 ago. I have no idea.
24 Q. Did you read and respond to emails?
25 A. When Joe would email me, yes, I'd respond

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1 JEFFERY HEITZENRATER - BY MR. HUTTON
2 to him.
3 Q. There's a computer terminal in the office?
4 A. Computer terminal. What do you mean
5 "terminal"? Yeah. There's a computer there?
6 Q. And OfficeMax corporate sends lots of
7 information to the store through that computer, does
8 it not?
9 A. Well, there's two different portals.
10 There's one, you know, for everybody, and there's one
11 for the store manager. So he would handle all the,
12 like, corporate information for the company.
13 Q. Well, let's -- let me try to be specific.
14 The store manager has his own computer
15 with his name and the email address; right?
16 A. Right.
17 Q. And then there's a portal for Store 898?
18 A. Right.
19 Q. And that's a computer where things come
20 in --
21 A. Planograms.
22 Q. -- available for everyone in the store;
23 right?
24 A. Planograms and things like that.
25 Q. And if there were corporate initiatives or

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<p style="text-align: right;">Page 254</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 ensure flawless execution of those planograms?</p> <p>3 A. I usually did them, so I executed them</p> <p>4 well, I think.</p> <p>5 Q. Is there anyone else in that store who</p> <p>6 worked on planograms but you?</p> <p>7 A. A lot of people, even the store manager.</p> <p>8 Q. Who all worked -- who didn't work on the</p> <p>9 planograms?</p> <p>10 A. The ImPress supervisor, or manager,</p> <p>11 whatever his title was.</p> <p>12 Q. Did you support the store manager in</p> <p>13 creating a sales culture that increased the sales?</p> <p>14 MR. PALITZ: Objection. Asked and</p> <p>15 answered.</p> <p>16 A. You know, Josh really wanted to, like I</p> <p>17 said, put together a sales board for the MaxAssurance.</p> <p>18 When you say "sales" and I think OfficeMax, that is</p> <p>19 what I think of is MaxAssurance. That's what they</p> <p>20 focused on. So we would, you know, fill out the</p> <p>21 board, you know, for the sales goals or culture,</p> <p>22 whatever you call it.</p> <p>23 Q. And I think this is actually broader than</p> <p>24 MaxAssurance. It says: In a sales culture that</p> <p>25 increases sales.</p>	<p style="text-align: right;">Page 256</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 store?</p> <p>3 MR. PALITZ: Objection.</p> <p>4 A. Not that I recall.</p> <p>5 Q. In other words, did you make sure that the</p> <p>6 employees were working hard when they were working on</p> <p>7 your shift?</p> <p>8 MR. PALITZ: Objection.</p> <p>9 A. I made sure when Josh left a list, that it</p> <p>10 got done, yes.</p> <p>11 Q. And if somebody was goofing off, as long</p> <p>12 as the list got done, that was okay with you. Is that</p> <p>13 what you are saying?</p> <p>14 MR. PALITZ: Objection.</p> <p>15 A. It was tough for me to keep track of</p> <p>16 everybody, you know, when I was in the back working,</p> <p>17 you know, or in the aisles working, you know.</p> <p>18 Q. Wasn't that your job, to keep track of</p> <p>19 other people working?</p> <p>20 A. According to the list, it wasn't.</p> <p>21 Q. So if Josh forgot to write on his list,</p> <p>22 "Make sure other employees are working hard and doing</p> <p>23 their jobs and doing quality work," that was not in</p> <p>24 your mind a task or function that you had to do that</p> <p>25 day?</p>
<p style="text-align: right;">Page 255</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 Did you support the store manager in a</p> <p>3 sales culture that increases sales?</p> <p>4 MR. PALITZ: Objection.</p> <p>5 A. Um, "Sales culture that increases sales."</p> <p>6 What do you mean? Like a warm, fuzzy</p> <p>7 building or something. What does that mean?</p> <p>8 Q. I think it has to do with informing and</p> <p>9 motivating people?</p> <p>10 A. Oh. No then.</p> <p>11 Q. Says that they will do their jobs well?</p> <p>12 A. No. Okay. Yeah. I basically -- if I</p> <p>13 motivated anybody, it was by example, you know, by me</p> <p>14 being able to sell at a high level.</p> <p>15 Q. Did you adhere to and enforce high levels</p> <p>16 of professionalism, work ethic and work quality?</p> <p>17 MR. PALITZ: Objection.</p> <p>18 A. I believe I was very professional and, you</p> <p>19 know, I had a good work ethic, and my quality, you</p> <p>20 know, I made sure it was okay.</p> <p>21 Q. Yeah. I think this position description</p> <p>22 is probably referencing something else.</p> <p>23 Did you enforce high levels of</p> <p>24 professional work ethics and work quality between and</p> <p>25 among other sales associates and employees in the</p>	<p style="text-align: right;">Page 257</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 A. Well, I feel like, you know, my time</p> <p>3 there, I was, you know, basically a robot and did what</p> <p>4 I was told. And that's basically, you know -- why I</p> <p>5 didn't do a lot of these things and why I spoke to Joe</p> <p>6 Nosko, and why I told him how I felt about the work</p> <p>7 and the job.</p> <p>8 Q. Is there anything on this job description</p> <p>9 that you did while you were working for Josh?</p> <p>10 A. Sure. Let me check through it.</p> <p>11 (There was a pause in the proceeding.)</p> <p>12 A. Perform cash pulls. Made change orders</p> <p>13 and deposits with corporate policies. I did that.</p> <p>14 Q. What number is that?</p> <p>15 A. Nine.</p> <p>16 We didn't really have a planning day, so I</p> <p>17 would rule No. 8 out. Josh didn't really plan on his</p> <p>18 planning day.</p> <p>19 Q. Did you act as the store manager on the</p> <p>20 two days he was not scheduled to work?</p> <p>21 MR. PALITZ: Objection.</p> <p>22 A. I basically did what I was told when I was</p> <p>23 there alone or with Mike. Everybody knew what they</p> <p>24 had to do.</p> <p>25 MR. PALITZ: Tim, I'd appreciate it if you</p>

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<p style="text-align: right;">Page 266</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 but according to standard, yes, they're all</p> <p>3 responsibilities of MOD.</p> <p>4 Q. And you correctly anticipated my next</p> <p>5 question, and that is: At least for you, when you</p> <p>6 were MOD at Store 898, which of these didn't you carry</p> <p>7 out?</p> <p>8 A. It really depended. You know, like I</p> <p>9 said, it depended on what Josh put on a list. If it</p> <p>10 wasn't on there, then it wasn't carried out. It</p> <p>11 changed day to day. It really did. I mean, not every</p> <p>12 day when you're on MOD, customer experience is top</p> <p>13 quality. Every associate is doing that.</p> <p>14 They're making sure their customer</p> <p>15 experience is top priority, because I -- even if I was</p> <p>16 MOD across the store, I wouldn't know what an</p> <p>17 associate is telling a customer or something. So they</p> <p>18 all know that customer service is top priority.</p> <p>19 Right? So that would be one thing.</p> <p>20 Operational process to standard. Again, I</p> <p>21 don't think so.</p> <p>22 Follow up and complete retail news posting</p> <p>23 items. Maybe if that -- okay, so those are price</p> <p>24 changes. Those would have to be done. So whoever was</p> <p>25 MOD would do that or direct somebody to do it in that</p>	<p style="text-align: right;">Page 268</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 A. Uh-huh.</p> <p>3 Q. And those deliveries to that store came,</p> <p>4 what, two days a week?</p> <p>5 A. It changed depending.</p> <p>6 Q. But it was two or three days a week?</p> <p>7 A. Could be.</p> <p>8 Q. And they typically came in on certain</p> <p>9 days, but they sometimes kind of surprised you and</p> <p>10 came in on another day; right?</p> <p>11 A. It's possible. I think that they -- from</p> <p>12 what I can remember, I think they were all pretty</p> <p>13 consistent.</p> <p>14 Q. So if -- and maybe this never happened --</p> <p>15 but if Josh forgot to write on his list, "Make sure</p> <p>16 you receive the truck and unload the merchandise," and</p> <p>17 the truck shows up, what would you do as an MOD if the</p> <p>18 truck showed up?</p> <p>19 A. Well, the guy would come in the store --</p> <p>20 because that's happened -- the truck driver and say,</p> <p>21 "I need someone to unload my truck now," so I'd go</p> <p>22 back there and --</p> <p>23 Q. You wouldn't say, "Well, Josh didn't put</p> <p>24 that on my list so come back tomorrow"?</p> <p>25 A. In that particular situation, it would be</p>
<p style="text-align: right;">Page 267</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 particular situation.</p> <p>3 Q. Right.</p> <p>4 A. That's -- I mean, no coach customer</p> <p>5 experience and selling behaviors.</p> <p>6 Q. When you say "no coach customer experience</p> <p>7 and selling behaviors," were you telling me that's not</p> <p>8 something you would do?</p> <p>9 A. Not me particularly, nope.</p> <p>10 And then ImPress is achieving production</p> <p>11 of customer orders. Not that I recall.</p> <p>12 Customer opportunities -- front checkout</p> <p>13 process.</p> <p>14 I don't know. I'd say that's about it</p> <p>15 from what I can remember.</p> <p>16 Q. Okay. Were there other things that you</p> <p>17 did while you were MOD that aren't on this list?</p> <p>18 A. Not that I recall.</p> <p>19 Q. But mostly what you would do when you were</p> <p>20 MOD is whatever Josh wrote on a list that he left</p> <p>21 behind?</p> <p>22 A. For the most part.</p> <p>23 Q. So as an example, trucks would deliver</p> <p>24 what they call them "PowerMax" deliveries to the</p> <p>25 store; right?</p>	<p style="text-align: right;">Page 269</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 assumed it needs to be done.</p> <p>3 Q. And you might jump back and do it because</p> <p>4 the person who receives the truck has to unlock the</p> <p>5 door and account for the merchandise coming in the</p> <p>6 door; right?</p> <p>7 A. Receive the truck.</p> <p>8 Q. Right. That's called receiving the truck.</p> <p>9 A. Right.</p> <p>10 Q. And you need to then pull two, three</p> <p>11 pallets off the truck; right?</p> <p>12 A. Five or six sometimes.</p> <p>13 Q. How often was it five or six compared to</p> <p>14 two or three?</p> <p>15 A. It seemed more often than not. We had a</p> <p>16 small receiving department so, you know, the holiday</p> <p>17 seasons were bigger than others. But preparation to</p> <p>18 those, we received a lot of stuff off the truck.</p> <p>19 Q. Okay. Just curious. How long does it</p> <p>20 take you to move six pallets 30 feet?</p> <p>21 A. Not long. That's the easy part. The</p> <p>22 tough part is breaking them all down and put them in</p> <p>23 carts, separating them, going out, putting them on the</p> <p>24 shelf, odds and ends stuff. That's the hard part.</p> <p>25 Q. Except for one thing. That part doesn't</p>

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<p style="text-align: right;">Page 274</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 workday on a day when you opened; putting up stock,</p> <p>3 waiting on customers and then time to go home?</p> <p>4 A. It's a long workday. There's time for a</p> <p>5 lot of different stuff, you know.</p> <p>6 Q. That's what I'm trying to figure out.</p> <p>7 A. I could run the register for a while. If</p> <p>8 there was a lapse in a cashier or something, you know,</p> <p>9 I would run the register.</p> <p>10 If the ImPress guy wanted to take a lunch,</p> <p>11 which he did, I would go back and work ImPress. So I</p> <p>12 did, you know, everything really. You know, it's what</p> <p>13 we did.</p> <p>14 Q. Now, if you're stuck on a register and</p> <p>15 stuck over on ImPress, can you do these MOD</p> <p>16 responsibilities, assuming you're MOD at the time?</p> <p>17 A. I don't think so. And that was an issue</p> <p>18 that I think that store had. You know, as far as my</p> <p>19 knowledge goes, I know we had that problem.</p> <p>20 Q. Why do you say that?</p> <p>21 A. Because there was just no ability to do</p> <p>22 MOD tasks, you know, like, according to the standard,</p> <p>23 or whatever, and the training I went over with Don and</p> <p>24 the way that Melissa allowed me to do it on a very</p> <p>25 rare basis.</p>	<p style="text-align: right;">Page 276</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 Q. Well, you know, with that opening of the</p> <p>3 store, would you do something called a "store tour"?</p> <p>4 A. That -- remember we talked about the list?</p> <p>5 We would put that onto the store tour.</p> <p>6 Q. And other people have mentioned that you</p> <p>7 often did walk around with a legal pad; right?</p> <p>8 A. Yes, I did.</p> <p>9 Q. And you would -- the legal pad had things</p> <p>10 that needed to be done that you wrote, not things to</p> <p>11 be done that Josh wrote.</p> <p>12 A. From Joe Nosko's direction I would write</p> <p>13 on legal pads, like I mentioned before.</p> <p>14 Q. Right.</p> <p>15 A. Right. And it would be a long list, so it</p> <p>16 would take a while to get through it.</p> <p>17 Q. And part of what you had to do was decide</p> <p>18 what was going to be done and not get done on a given</p> <p>19 day; right?</p> <p>20 MR. PALITZ: Objection. Asked and</p> <p>21 answered.</p> <p>22 A. Okay. Start over again.</p> <p>23 Q. Part of what you would have to decide is</p> <p>24 what's going to get done or not done in a given day;</p> <p>25 right?</p>
<p style="text-align: right;">Page 275</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 With Josh, you know, it was get done what</p> <p>3 he wants done, you know, and it was tough to deal</p> <p>4 with. But that's what it was.</p> <p>5 Q. Did it ever occur to you that that store</p> <p>6 under Josh might have been kind of an anomaly?</p> <p>7 MR. PALITZ: Objection.</p> <p>8 A. I have no idea, really, how other stores</p> <p>9 are run. Like I said before, I'm not sure.</p> <p>10 Q. Would you expect all OfficeMax stores</p> <p>11 would be run that way?</p> <p>12 MR. PALITZ: Objection.</p> <p>13 A. I wouldn't know.</p> <p>14 Q. Do you know why they would train you to do</p> <p>15 something you were never going to do?</p> <p>16 MR. PALITZ: Objection. Calling for</p> <p>17 speculation.</p> <p>18 A. Well, I worked ImPress, and I was trained</p> <p>19 on that, and I worked unloading trucks, and I was</p> <p>20 trained on that. I worked cash register, and I was</p> <p>21 trained on that. You know, I closed drawers, opened</p> <p>22 the store. I was trained on that.</p> <p>23 But just as far as MOD duties and being</p> <p>24 the manager on duty, it just wasn't seen. You know,</p> <p>25 we just didn't do it.</p>	<p style="text-align: right;">Page 277</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 MR. PALITZ: Objection. Asked and</p> <p>3 answered.</p> <p>4 A. Well, you know, Joe would give me the</p> <p>5 list. We'd walk the store, and he'd want me to take</p> <p>6 notes. And then he would write it on there by</p> <p>7 importance level of being completed, and that's how we</p> <p>8 determined how to do it.</p> <p>9 Q. Back up. I wasn't talking about Joe's</p> <p>10 list. I was talking about the list that you wrote.</p> <p>11 A. You said the legal pad. And the time that</p> <p>12 I wrote on legal pads was when I was the person there</p> <p>13 with Joe.</p> <p>14 Q. Didn't you write on legal pads when you</p> <p>15 were opening the store and Joe was nowhere to be seen?</p> <p>16 A. Not that I recall, no.</p> <p>17 Q. Okay. So I asked you about your -- what</p> <p>18 you would do on those days when you opened the store.</p> <p>19 Can you describe an average day for me on</p> <p>20 those days when you were closing?</p> <p>21 A. Well, it would get a little slower towards</p> <p>22 the nighttime. You know, you get there at whatever</p> <p>23 time, 12 o'clock, and work until 10 on the weekdays, I</p> <p>24 think it was. And, you know, you get there and Josh</p> <p>25 would be there until 5. So he would immediately want</p>

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<p style="text-align: right;">Page 278</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 to take a lunch when I got there.</p> <p>3 So we'd go over a few things. He'd be</p> <p>4 like, "We need this planogram done. We need this,</p> <p>5 this and this. That's what I want you really to focus</p> <p>6 and work on tonight." He'd go to lunch and come back</p> <p>7 and I'd be busy at work doing what I had to do. And</p> <p>8 then it would slow down. That would be that.</p> <p>9 Q. Okay.</p> <p>10 A. We'd close the door --</p> <p>11 Q. And what would you do when it slowed down</p> <p>12 during the evening? How would you spend your time?</p> <p>13 A. Usually his list would last a few days.</p> <p>14 It wasn't just a -- you know, he wouldn't give me just</p> <p>15 enough work to be done and work on something else.</p> <p>16 But if it ever were to occur where I -- where I had</p> <p>17 extra time, I would dust or clean the printers to make</p> <p>18 them look sharp and nice simply because Joe focuses on</p> <p>19 that and wanted it to be clean. So that's what I did.</p> <p>20 Q. Do you have any of these lists that Josh</p> <p>21 would give you?</p> <p>22 A. No.</p> <p>23 Q. Can you give me a list of the sorts of</p> <p>24 things that he put on his list so that I can get a</p> <p>25 better grasp of what he told you to do?</p>	<p style="text-align: right;">Page 280</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 believe he was talking to me that way. That's what it</p> <p>3 was.</p> <p>4 Q. Were there any, perhaps less skilled or</p> <p>5 lower-paid employees in the store who knew how to down</p> <p>6 stock the binders?</p> <p>7 A. That's a possibility. I mean, I was just</p> <p>8 doing what I was told, you know, by my boss. What am</p> <p>9 I going to tell him? No.</p> <p>10 Q. Well, did you ever ask him whether it was</p> <p>11 okay to assign that to someone else?</p> <p>12 A. I mean, basically when he would talk to</p> <p>13 me, it would be quick, quick, quick. So, "Hey, I need</p> <p>14 you to down stock, fill a binder wall." So that's</p> <p>15 what I would do. You know what I mean?</p> <p>16 No. I was cultured to almost listen to</p> <p>17 what he, you know, would tell me what to do and I'd do</p> <p>18 it.</p> <p>19 Q. Okay. It just seems to me that I am</p> <p>20 hearing that you're a pretty fine seller, and that</p> <p>21 maybe there might be some associates out there who</p> <p>22 don't sell as well as you, and it might make sense to</p> <p>23 assign that routine work to someone who doesn't have</p> <p>24 the sales skills?</p> <p>25 A. Again, that's what I brought up to Joe</p>
<p style="text-align: right;">Page 279</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 MR. PALITZ: Objection. Asked and</p> <p>3 answered.</p> <p>4 A. As I said before, all it is basically that</p> <p>5 I can remember, is down stocking, fill a binder wall.</p> <p>6 Every time I come in, "The binders are really messed</p> <p>7 up. Go fill a binder wall." That's what I remember</p> <p>8 from it. The list I couldn't tell you. There was</p> <p>9 different stuff on it all the time.</p> <p>10 Q. Don't assume anything into this, but how</p> <p>11 long can it take to down stock?</p> <p>12 A. Binders?</p> <p>13 Q. Yeah.</p> <p>14 A. That's the worst job there. Have you ever</p> <p>15 been in an OfficeMax?</p> <p>16 Q. Oh, yeah.</p> <p>17 A. Have you been to the binders?</p> <p>18 Q. Yeah.</p> <p>19 A. You know how they're always like crooked,</p> <p>20 and messed up and reds here, whites here and yellows</p> <p>21 here and pinks here and greens here, and they're all</p> <p>22 mixed up. That would be my job. So it would take me</p> <p>23 a while.</p> <p>24 And Joe, when I told him that, he laughed</p> <p>25 because he's like, "Are you serious?" I just couldn't</p>	<p style="text-align: right;">Page 281</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 Nosko and told him, you know, that it was frustrating</p> <p>3 and, you know, we went over that when I told him.</p> <p>4 Q. What did you use -- they call it a</p> <p>5 "boundless radio." What did you use it for?</p> <p>6 A. Communicating with other people if I</p> <p>7 needed help with something.</p> <p>8 Q. Would there be any other reason to</p> <p>9 communicate with other people except to ask them for</p> <p>10 help?</p> <p>11 A. Yeah. Everyone in the store would</p> <p>12 communicate on it. Basically, you know, if the</p> <p>13 ImPress supervisor was away from, you know, his desk,</p> <p>14 you know, somebody might chime in and say, "You have a</p> <p>15 customer back here," just to let them know.</p> <p>16 Or if the tech specialist was away, the</p> <p>17 cashier that's always up front might say so and so,</p> <p>18 you have a customer in printers or something like</p> <p>19 that. That was what it was, pretty much, you know,</p> <p>20 communication.</p> <p>21 Q. Would you ever use the radio to coach</p> <p>22 associates?</p> <p>23 A. Not that I can recall, no.</p> <p>24 Q. Did anyone ever use the radio to coach</p> <p>25 associates?</p>

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<p style="text-align: right;">Page 17</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 Q. How did you gain knowledge from your uncle</p> <p>3 about business matters?</p> <p>4 MR. PALITZ: Objection.</p> <p>5 You can answer.</p> <p>6 A. I don't understand your question.</p> <p>7 Q. Sure. You said you've gained a lot of</p> <p>8 knowledge from your uncle about business matters.</p> <p>9 What kind of knowledge are you referring to?</p> <p>10 A. How to run a business. How to be</p> <p>11 successful.</p> <p>12 Q. Does he run a business?</p> <p>13 A. He's done many businesses.</p> <p>14 Q. Have you worked with him in any of his</p> <p>15 businesses?</p> <p>16 MR. PALITZ: Objection.</p> <p>17 You can answer.</p> <p>18 A. Okay. Now I'm confused. I don't</p> <p>19 understand.</p> <p>20 Q. Your uncle runs a bunch of businesses;</p> <p>21 right?</p> <p>22 A. Yeah, in the past.</p> <p>23 Q. Have you worked with him in any of those</p> <p>24 businesses?</p> <p>25 MR. PALITZ: Objection.</p>	<p style="text-align: right;">Page 19</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 Q. Okay. So in any event, apparently you had</p> <p>3 some conversations with your uncle about your position</p> <p>4 at OfficeMax?</p> <p>5 A. About this, correct.</p> <p>6 Q. What prompted you to have those</p> <p>7 conversations?</p> <p>8 A. Because I was unsure.</p> <p>9 Q. About what?</p> <p>10 A. This, you know, misclassification of my</p> <p>11 job title and what my duties were.</p> <p>12 Q. When did you first have those</p> <p>13 conversations with your uncle?</p> <p>14 A. In the beginning of this case.</p> <p>15 Q. Can you put a time frame on it?</p> <p>16 A. No. I didn't record a time, so I couldn't</p> <p>17 tell you.</p> <p>18 Q. Were you working at OfficeMax at the time?</p> <p>19 A. No, no.</p> <p>20 Q. Do you know what happened in your life</p> <p>21 experience that caused you to wonder whether you were</p> <p>22 classified correctly during the time period you were</p> <p>23 working at OfficeMax?</p> <p>24 A. Yeah. I mean, simply because, you know,</p> <p>25 just not being involved in any of the -- any of the</p>
<p style="text-align: right;">Page 18</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 You can answer. If I object, you can</p> <p>3 answer unless I say otherwise, just so you know.</p> <p>4 A. Yeah. Budget Self Storage.</p> <p>5 Q. So that was a family business, so to</p> <p>6 speak?</p> <p>7 A. He ran it.</p> <p>8 Q. Any others?</p> <p>9 A. Just residential properties, property</p> <p>10 maintenance and ideas of, you know, how, you know, it</p> <p>11 works, how to acquire properties and things of that</p> <p>12 nature.</p> <p>13 Q. Is he an investor or partner or member in</p> <p>14 your current business?</p> <p>15 MR. PALITZ: Objection.</p> <p>16 I hope we're going to tie that back to the</p> <p>17 case soon.</p> <p>18 A. He was.</p> <p>19 Q. Is that past tense?</p> <p>20 A. Past tense.</p> <p>21 Q. Is that business still ongoing --</p> <p>22 A. Let me go back --</p> <p>23 MR. PALITZ: Objection.</p> <p>24 A. Let me go back to that other question that</p> <p>25 you asked if he was a partner. He was a lender.</p>	<p style="text-align: right;">Page 20</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 managerial duties, I guess, made me think a little bit</p> <p>3 about it, you know, sure.</p> <p>4 Q. What do you mean when you say that you</p> <p>5 weren't involved in any of the managerial duties at</p> <p>6 OfficeMax?</p> <p>7 A. Basically, you know, when I took the job,</p> <p>8 you know, there was some expectations from myself and</p> <p>9 that were portrayed, I guess, in a way from the</p> <p>10 interviews that you would -- you know, I would be able</p> <p>11 to have control. And then after, you know, starting</p> <p>12 at OfficeMax, it became obvious that, you know, I was,</p> <p>13 I guess, I was a glorified stock boy. So, you know,</p> <p>14 it wasn't what I thought, I guess, in what was</p> <p>15 portrayed.</p> <p>16 Q. When you say there was some expectations</p> <p>17 on your part that you would "have control," what was</p> <p>18 said or done --</p> <p>19 A. Excuse me. Sorry to interrupt.</p> <p>20 I don't think that there were expectations</p> <p>21 from the company to me. In the way you worded it, it</p> <p>22 sounded that way. So I want to correct you and say</p> <p>23 that, my expectations for the company, when they were</p> <p>24 portrayed to me in the interview, were that, you know,</p> <p>25 there would be managerial stuff to do, and clearly</p>

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<p style="text-align: right;">Page 310</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 A. Yes -- or no. Wait. Says witness</p> <p>3 signature. Yeah.</p> <p>4 Q. Do you know of any instance when the store</p> <p>5 used an hourly employee to sign a separation notice?</p> <p>6 A. Okay. Rephrase that for me once.</p> <p>7 Q. Yeah. You signed as a manager. Do you</p> <p>8 know whether an hourly employee has ever been asked to</p> <p>9 sign a separation notice as a manager?</p> <p>10 A. Oh, as a manager?</p> <p>11 Q. Yeah.</p> <p>12 A. No. They wouldn't sign as a manager, no.</p> <p>13 Q. Kind of went with the stripes of having</p> <p>14 that job on that day, didn't it?</p> <p>15 A. It went with the stripes.</p> <p>16 Q. Did you also participate in the promotion</p> <p>17 interviews of -- did I ask about Ashley King? Ashley</p> <p>18 King, Mike Knapp and Missy Mauer?</p> <p>19 A. Rephrase that.</p> <p>20 Q. Yeah. Were Ashley King, Mike Knapp and</p> <p>21 Missy Mauer interviewed for a promotion during the</p> <p>22 time that you worked at Store 898?</p> <p>23 A. I believe that was when Josh was there,</p> <p>24 yes.</p> <p>25 Q. Did you participate in any of those</p>	<p style="text-align: right;">Page 312</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 position. And I don't even remember what the position</p> <p>3 was, but she's still a cashier.</p> <p>4 Q. Was she interviewed for the position at</p> <p>5 your suggestion?</p> <p>6 A. I believe so. I couldn't tell you for</p> <p>7 sure though.</p> <p>8 Q. And I think we talked about Mike. You</p> <p>9 recommended Mike. Mike applied for the position?</p> <p>10 A. It's for the ops manager.</p> <p>11 Q. Ops manager. All right.</p> <p>12 A. Well, actually, Colleen wanted to hire him</p> <p>13 for that position.</p> <p>14 Q. And you spoke up on his behalf and agreed</p> <p>15 that he would be a good selection, didn't you?</p> <p>16 A. I would say that -- I would say Colleen</p> <p>17 and Josh came to that conclusion. My understanding</p> <p>18 from before I was there, Mike applied for the</p> <p>19 assistant store manager job -- or didn't apply for it,</p> <p>20 but was recommended by Colleen to apply for it. So</p> <p>21 they'd been wanting to promote him for a time being.</p> <p>22 So I don't think that had to do anything about me.</p> <p>23 Q. That may be so. I just wanted to find</p> <p>24 out, were you -- did you recommend that he'd be a good</p> <p>25 candidate for advancement?</p>
<p style="text-align: right;">Page 311</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 promotion interviews?</p> <p>3 A. I think that -- I don't think I</p> <p>4 interviewed any of them. I think that Colleen might</p> <p>5 have been there as well. And Josh, I believe, was</p> <p>6 there.</p> <p>7 And Missy, you know, and Mike Knapp -- and</p> <p>8 who was the other?</p> <p>9 Q. Missy Mauers, Mike Knapp, Ashley King --</p> <p>10 actually Tim Shiffer or Shiffer -- I'm not sure how to</p> <p>11 pronounce it --</p> <p>12 A. Who's Ashley King? I don't even know that</p> <p>13 person.</p> <p>14 Q. She was a store employee.</p> <p>15 A. Ashley Ming?</p> <p>16 Q. Ming. Thank you.</p> <p>17 A. I don't believe -- I don't believe I</p> <p>18 participated in them. I can't remember for sure. But</p> <p>19 I do remember Missy has been a cashier at that</p> <p>20 business for a long time, and I told Josh -- or</p> <p>21 whoever was doing the interviews, I can't remember</p> <p>22 now -- but that I thought, you know, it would be good</p> <p>23 for her to, you know, move up through the company,</p> <p>24 she's been there so long. And, you know, that's where</p> <p>25 it was left. And I don't think she was hired for the</p>	<p style="text-align: right;">Page 313</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 A. Well, I thought all of them would be a</p> <p>3 good candidate for advancement.</p> <p>4 Q. Okay. We earlier talked about the selling</p> <p>5 and service reports. Do you remember that?</p> <p>6 A. Uh-huh.</p> <p>7 Q. Okay. Just a couple pieces of paper that</p> <p>8 relate to them.</p> <p>9 (The following exhibit was marked for</p> <p>10 identification: EXH Number 22.)</p> <p>11 Q. Showing you what's been marked for</p> <p>12 identification as Exhibit 22. This is something</p> <p>13 called a 2011 Selling and Service Reports Training</p> <p>14 Guide; right?</p> <p>15 A. Uh-huh.</p> <p>16 Q. And when you mentioned that Josh did some</p> <p>17 training around selling and service reports, is this,</p> <p>18 in essence, the training that Josh did?</p> <p>19 A. To who?</p> <p>20 Q. To you and to others at Store 898.</p> <p>21 A. I don't recall, per se, that we went over</p> <p>22 this particular packet. The way it was portrayed to</p> <p>23 me, "ink and toner attached percentage to business</p> <p>24 machines. 15 percent weighted."</p> <p>25 So here's the thing with that. When you</p>

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<p style="text-align: right;">Page 314</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 sold a printer, the way he portrayed it, sell an ink</p> <p>3 cartridge with it, or PC attachment percentage. When</p> <p>4 you sell a laptop, don't just sell a laptop. Sell a</p> <p>5 mouse with it. Okay?</p> <p>6 "PC average ticket." Oh, okay. So, you</p> <p>7 know, and the same thing. If it's a \$500 laptop, try</p> <p>8 to sell, you know, however many dollars worth, you</p> <p>9 know, he would tell us that, paper. Attached ink and</p> <p>10 toner.</p> <p>11 We would always put paper out by the cash</p> <p>12 register and, you know, he would tell us, "When you're</p> <p>13 running cash register, if somebody comes up with an</p> <p>14 ink cartridge, sell them a ream of paper."</p> <p>15 And then "average transaction INC</p> <p>16 percentage." I'm not really certain what that is.</p> <p>17 Q. The store had certain goals to meet in</p> <p>18 each and every one of these, and in this case I think</p> <p>19 there are five selling report metrics; right?</p> <p>20 A. Uh-huh. Right.</p> <p>21 Q. Am I right? And if we turn to the next --</p> <p>22 further back if we turn to page 8180, or page 6 of 14,</p> <p>23 it had eight different service report metrics as well;</p> <p>24 right?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 316</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 But it's kind of interesting, maybe.</p> <p>3 If you turn to page 4, 5 and 6 -- 4 and 5</p> <p>4 of 18 where it's got the selling reports.</p> <p>5 A. Let's see here. Okay. This page</p> <p>6 (indicating)?</p> <p>7 Q. Yeah. Well, this page, 4 of 14. Do you</p> <p>8 see that one?</p> <p>9 A. Uh-huh.</p> <p>10 Q. Page 178 at the bottom.</p> <p>11 A. Uh-huh.</p> <p>12 Q. Okay. So the selling -- if the selling</p> <p>13 metric is average transaction inc. percentage --</p> <p>14 increase percentage?</p> <p>15 A. To a printer.</p> <p>16 Q. Average transaction increase percentage,</p> <p>17 is what mine says at the top. Is that what yours</p> <p>18 says? Yeah. We're reading the same one.</p> <p>19 Says, "If your percentage is green,</p> <p>20 celebrate the achievement." If it's below minimum</p> <p>21 expectation, then it's got some suggestions of what</p> <p>22 you can do to your store -- at your store to do better</p> <p>23 in this area. Do you see that?</p> <p>24 A. Uh-huh.</p> <p>25 Q. And as I was looking at this last night,</p>
<p style="text-align: right;">Page 315</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 Q. And those were published and the store was</p> <p>3 measured on whether it was achieving those targets in</p> <p>4 each of those, what turn out to be -- I don't know.</p> <p>5 Forget the number. It's too late in the day --</p> <p>6 several selling service metrics; correct?</p> <p>7 A. Right.</p> <p>8 Q. Okay. Now, this training guide, it says</p> <p>9 it applies to the store leadership team. Were you on</p> <p>10 the store leadership team?</p> <p>11 A. As the title I should have been. Sure.</p> <p>12 Q. And it says that store leadership team</p> <p>13 must read training guide to fully understand each</p> <p>14 report metric regarding expectations.</p> <p>15 So do you know whether or not you ever</p> <p>16 were -- read it?</p> <p>17 A. I think this is one of those things where</p> <p>18 it would come up on the portal, and Josh would be</p> <p>19 like, "Oh, just check it off and read it some other</p> <p>20 time. We're busy right now."</p> <p>21 But, you know, again, getting back to the</p> <p>22 MaxAssurance sales, that was a big thing that our</p> <p>23 store focused on, and control center of selling. You</p> <p>24 know, the other stuff I never even knew existed.</p> <p>25 Q. Well, we're going get to this in a minute.</p>	<p style="text-align: right;">Page 317</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 there's a list of suggestions for each and every one</p> <p>3 of the selling and service report metrics, isn't</p> <p>4 there?</p> <p>5 A. Looks like it.</p> <p>6 Q. Were there things that you or Josh could</p> <p>7 do in your store to cause your store to achieve these</p> <p>8 results?</p> <p>9 A. Yeah. When we needed to up anything, you</p> <p>10 know, Josh or I would both be on the floor selling and</p> <p>11 doing it. You know, he would tell the associates</p> <p>12 whether or not, you know -- like I said, he would tell</p> <p>13 us, "Sell a ream of paper with an ink cartridge," or</p> <p>14 "When you sell a printer, don't just sell a</p> <p>15 MaxAssurance. Sell an ink cartridge with it." Things</p> <p>16 of that nature.</p> <p>17 I guess, does that answer your question.</p> <p>18 Q. Well, I don't want to be a dead horse,</p> <p>19 but if I take this first one where it says, "If you</p> <p>20 are below minimum expectation or average</p> <p>21 transactions," it says, in essence, are your</p> <p>22 associates aware of the improvement expectation in the</p> <p>23 daily average expectation. Are your top performers</p> <p>24 being recognized? Are your associates aware of</p> <p>25 opportunities? You know, review this coaching video.</p>

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<p style="text-align: right;">Page 318</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 Review the mystery shop performance and communicate</p> <p>3 opportunities.</p> <p>4 There are some sort of concrete</p> <p>5 suggestions.</p> <p>6 A. Yeah. And the big thing is with this -- I</p> <p>7 wish I had the time, you know, to read it in-depth and</p> <p>8 go over it and have time to MOD more than we did,</p> <p>9 because I feel like the store was, as a whole,</p> <p>10 MaxAssurance was phenomenal, but these other areas</p> <p>11 weren't being focused on because maybe -- you know,</p> <p>12 even Joe had said at a time, even the way the message</p> <p>13 is being relayed down is just not there. You guys</p> <p>14 need to work on that.</p> <p>15 He'd say that to Josh, and then, you know,</p> <p>16 Josh would get mad at me because I didn't do</p> <p>17 something. But I had no idea I had to do it. And</p> <p>18 every time I wanted to do it, he wouldn't allow it to</p> <p>19 be done. That's something I wanted to tell you.</p> <p>20 Q. I understand. But do you understand that</p> <p>21 your store's performance and your performance was</p> <p>22 judged on whether these metrics were being achieved?</p> <p>23 A. I understand, again, the MaxAssurance and</p> <p>24 things like that, and then the printer attachment and</p> <p>25 that, so I understand that.</p>	<p style="text-align: right;">Page 320</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 apparently was one.</p> <p>3 Q. Refund percent?</p> <p>4 A. Refund percent. There was a policy -- and</p> <p>5 I did a lot of refunds. There was a policy that Joe</p> <p>6 Nosko, when I first started, came to me and said, "If</p> <p>7 a customer brings something in, don't start an</p> <p>8 argument. Refund it," because they had a return</p> <p>9 policy -- and I don't remember what the return policy</p> <p>10 was exactly. But if it was outside, then you couldn't</p> <p>11 return it. But you could still give them a merchant</p> <p>12 card, okay, like a gift card for the store rather than</p> <p>13 their money back.</p> <p>14 So they didn't -- he didn't want</p> <p>15 complaints going to corporate in his district for</p> <p>16 something that's 15 days past where the refund policy</p> <p>17 says. So that's why that would probably be high, I</p> <p>18 would imagine.</p> <p>19 Q. So you could make exceptions to, quote,</p> <p>20 unquote, to "delight the customer"; right?</p> <p>21 A. In particular situations Joe told me to do</p> <p>22 something, I wasn't going to argue with him for sure.</p> <p>23 Q. But would you exercise your judgment on</p> <p>24 whether to make an exception or not depending on what</p> <p>25 the customer needed and what it would take to resolve</p>
<p style="text-align: right;">Page 319</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 (The following exhibit was marked for</p> <p>3 identification: EXH Number 23.)</p> <p>4 (There was a discussion off the record.)</p> <p>5 Q. This is a colorful exhibit of something</p> <p>6 called the Speed Report. Surely in your management of</p> <p>7 Store 898 in 2011 you saw these Speed Reports, didn't</p> <p>8 you?</p> <p>9 A. Josh would print them up and put them on</p> <p>10 there. We would look to see what color we were and</p> <p>11 that's about it.</p> <p>12 Q. Red is not good, is it?</p> <p>13 A. I don't believe so.</p> <p>14 Q. Okay. And as the assistant manager, did</p> <p>15 you ever look to see what all these different metrics</p> <p>16 were that the stores were being measured on?</p> <p>17 A. The mystery shop score I knew of.</p> <p>18 Web survey. Not familiar.</p> <p>19 MaxPerks. Brittney was doing it, you</p> <p>20 know, not the right way, so that's a problem. But I</p> <p>21 knew about, you know, every person that came through</p> <p>22 you would want to ask them for their scan MaxPerk's</p> <p>23 card, and I did it when I was running cashier.</p> <p>24 Customer complaints. You know, again, as</p> <p>25 I said before, I didn't really see any but that</p>	<p style="text-align: right;">Page 321</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 the customer problem?</p> <p>3 MR. PALITZ: Objection.</p> <p>4 A. You know, like I said, if you came in to</p> <p>5 OfficeMax and you said, "Hey, you know, I bought this</p> <p>6 pen. It's \$50 and, you know, it's got a little</p> <p>7 scratch in it, you know, I don't want it anymore," or</p> <p>8 something like that, and you're ten days past the</p> <p>9 thing, you know, all the time you were supposed to,</p> <p>10 you know, refund it. You know, now using your</p> <p>11 judgment, I would say that's pretty self-explanatory,</p> <p>12 right? I mean, I don't know.</p> <p>13 Does that answer your question?</p> <p>14 Q. Well, as a store manager, you're faced</p> <p>15 with that situation, might you first say to the</p> <p>16 customers, "Oh, well, let me get you a new one that's</p> <p>17 not scratched." In other words, do an exchange</p> <p>18 instead of a refund?</p> <p>19 MR. PALITZ: Objection.</p> <p>20 Q. That's another way to handle that, isn't</p> <p>21 it?</p> <p>22 A. Well, I gave you a situation. Maybe it</p> <p>23 wouldn't have been a refund in that particular</p> <p>24 situation. If they were unhappy for whatever reason,</p> <p>25 possibly. I don't know. It just depended on what the</p>

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<p style="text-align: right;">Page 21</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 there wasn't.</p> <p>3 Q. And do you recall what was said or done in</p> <p>4 the interview to create those expectations in your</p> <p>5 mind?</p> <p>6 A. Basically, we went over what was posted on</p> <p>7 the job description. So it's all right down on paper.</p> <p>8 It shows what it was and we went over that.</p> <p>9 Q. When you say "we," who?</p> <p>10 A. Joe Nosko and I, who was the district</p> <p>11 manager for OfficeMax. And we had the interview in</p> <p>12 Williamsville, New York, at a different store.</p> <p>13 Q. I'll circle back and probably ask you some</p> <p>14 more questions about your interview, but for now my</p> <p>15 question is: Did there come a point in time when you</p> <p>16 saw some divergence between what you were doing day to</p> <p>17 day in your role and what those expectations</p> <p>18 originally had been?</p> <p>19 A. Rephrase that for me, please.</p> <p>20 Q. Yeah. What changed?</p> <p>21 A. In what?</p> <p>22 Q. What was there about your actual job as an</p> <p>23 OfficeMax assistant manager that caused you to think</p> <p>24 that you were doing something different than what was</p> <p>25 described?</p>	<p style="text-align: right;">Page 23</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 that.</p> <p>3 We counted down the cash drawers at the</p> <p>4 end of the night, but, again, the operations manager</p> <p>5 did that.</p> <p>6 And then planograms was a big thing. You</p> <p>7 know, it would come down on the list electronically,</p> <p>8 and it would say what needs to be done. Okay. So,</p> <p>9 you know, even the store associates would see that and</p> <p>10 check off on it?</p> <p>11 So, basically, as far as that goes, you</p> <p>12 know, there's -- that's what I'm saying to that.</p> <p>13 Q. Were there other things that you did with</p> <p>14 your day that were different than you were led to</p> <p>15 be -- led to believe you would be doing?</p> <p>16 A. Yeah. I mean, you know, when I first</p> <p>17 started with the company, I was very excited. You</p> <p>18 know, I was excited to start with a large company and,</p> <p>19 you know, my expectations of the company were that I</p> <p>20 would have the ability to manage and to grow with the</p> <p>21 company.</p> <p>22 But soon to believe -- when Josh, who was</p> <p>23 the store manager of the Batavia, New York, store that</p> <p>24 I worked at, came in, he basically told me and</p> <p>25 delegated to me everything that I should be doing,</p>
<p style="text-align: right;">Page 22</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 A. I don't think that anything changed, you</p> <p>3 know. What I meant by that is the job description</p> <p>4 said one thing. I showed up for work. We did, you</p> <p>5 know, certain things, like stocking shelves, down</p> <p>6 stocking the binder wall, putting freight onto the</p> <p>7 floor physically. You know, all these things that</p> <p>8 were really not listed, you know, so I knew</p> <p>9 immediately -- you know, I figured I'd give it time --</p> <p>10 give it some time to see if it would change. So</p> <p>11 nothing ever changed. It was always the same. It was</p> <p>12 consistent.</p> <p>13 Q. Did you perform any management functions</p> <p>14 during the time you worked at OfficeMax?</p> <p>15 MR. PALITZ: Objection.</p> <p>16 You can answer.</p> <p>17 A. Not really. You know, I would say -- I</p> <p>18 would say as the title of assistant store manager, you</p> <p>19 know, we basically -- we had the same exact job and</p> <p>20 duties as what we did as an operations manager, which</p> <p>21 was supposedly below an assistant store manager.</p> <p>22 And, basically, what an operations manager</p> <p>23 did was -- that I did that you would consider on the</p> <p>24 job duties maybe, is open and close the store. That</p> <p>25 was important. But, again, the operations manager did</p>	<p style="text-align: right;">Page 24</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 which included a few things I can remember that come</p> <p>3 to my mind is -- I spoke to the district manager about</p> <p>4 it -- is down stocking the binder wall. Okay. So</p> <p>5 that means taking them from up top, putting them on</p> <p>6 the shelf, making them all neat, changing labels,</p> <p>7 making new labels for the prices, and then setting</p> <p>8 planograms. That was a lot of my time is setting</p> <p>9 planograms and stocking shelves, so, yeah.</p> <p>10 Q. Okay. During the time you worked at</p> <p>11 OfficeMax, did you have a computer at home?</p> <p>12 A. Yes.</p> <p>13 Q. Did you ever use it for any OfficeMax</p> <p>14 business?</p> <p>15 A. No.</p> <p>16 Q. Did you have a smart phone?</p> <p>17 A. Yes.</p> <p>18 Q. Did you ever use it for OfficeMax</p> <p>19 business?</p> <p>20 A. Not for business, no.</p> <p>21 Q. Okay. Back then who was your provider for</p> <p>22 your smart phone?</p> <p>23 A. Verizon, I believe.</p> <p>24 Q. Is Verizon still your provider?</p> <p>25 A. We've switched to -- my business partner</p>

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<p style="text-align: right;">Page 33</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 Q. Has it paid you a salary?</p> <p>3 A. Yes.</p> <p>4 Q. How much have you earned at InkTech?</p> <p>5 MR. PALITZ: Objection.</p> <p>6 A. Yeah. I don't understand the relevance of</p> <p>7 that question.</p> <p>8 MR. PALITZ: You can answer, though, but</p> <p>9 yeah, you're right.</p> <p>10 A. Yeah. I'm not comfortable answering that</p> <p>11 question. I mean, I can. It doesn't matter.</p> <p>12 Q. Okay. How much?</p> <p>13 A. I just don't tell anybody that.</p> <p>14 Q. How much have you earned at InkTech?</p> <p>15 A. Last year my personal take was -- I</p> <p>16 couldn't even tell you exactly -- \$19,000 in the first</p> <p>17 year of business.</p> <p>18 Q. Does it have a website?</p> <p>19 A. It does.</p> <p>20 Q. And on that website are there any written</p> <p>21 or electronic profiles of you, your credentials or</p> <p>22 your experience?</p> <p>23 A. Well, my LinkedIn is the only thing on</p> <p>24 there. We did have InkTech Facebook or my InkTech</p> <p>25 Facebook. But, basically, when we put a post on</p>	<p style="text-align: right;">Page 35</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 what I mean? Handing out discounts to new businesses.</p> <p>3 Q. When did you form the idea of starting</p> <p>4 InkTech?</p> <p>5 MR. PALITZ: Objection.</p> <p>6 A. I can't recall. I think when I decided to</p> <p>7 leave OfficeMax.</p> <p>8 Q. When did you -- when did you first decide</p> <p>9 that you were going to leave OfficeMax? That really</p> <p>10 is my question.</p> <p>11 A. Okay. When the store manager just, you</p> <p>12 know -- getting back to, you know, my job at OfficeMax</p> <p>13 as stocking shelves. You know, it really was a</p> <p>14 bothersome thing.</p> <p>15 So, you know, Joe Nosko, the district</p> <p>16 manager, came into the store and he came up to me and</p> <p>17 asked me how I was.</p> <p>18 And I said, "Well, I'm not doing too</p> <p>19 good."</p> <p>20 And he said, "Why?"</p> <p>21 And I said, "Because every time I come</p> <p>22 into the store, the first thing the store manager says</p> <p>23 to me is, 'Go down stock and fill the binder wall.'"</p> <p>24 So my job there was to stock shelves, and</p> <p>25 I was just getting tired of it. So I told him, I</p>
<p style="text-align: right;">Page 34</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 there, it's for discounts and us building the store</p> <p>3 when we had retail, putting the sign up and stuff like</p> <p>4 that. But, yeah, that's about it, I guess, that I can</p> <p>5 remember.</p> <p>6 Q. Well, in that Facebook -- is there</p> <p>7 anything in that Facebook that references you, your</p> <p>8 role, your background, your experiences or your</p> <p>9 capabilities?</p> <p>10 A. Not that I can remember on Facebook, no.</p> <p>11 Q. Does InkTech have any business plans,</p> <p>12 written business plans?</p> <p>13 MR. PALITZ: Objection.</p> <p>14 A. I don't think so, no.</p> <p>15 Q. Did you put together a business plan or</p> <p>16 anything to share with your uncle in securing a loan?</p> <p>17 MR. PALITZ: Objection.</p> <p>18 A. No.</p> <p>19 Q. Does InkTech have any promotional</p> <p>20 materials that reference you, your role with the</p> <p>21 company, your background, your capabilities or your</p> <p>22 experiences?</p> <p>23 MR. PALITZ: Objection.</p> <p>24 A. That I can remember, no. All our</p> <p>25 literature was basically just discounts. You know</p>	<p style="text-align: right;">Page 36</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 said, "I'm going to give you a notice," and he didn't</p> <p>3 want me to do that. He want me to stay with the</p> <p>4 company. And I told him I couldn't do that. So he</p> <p>5 talked me into staying. So I gave him a six-week</p> <p>6 notice at that time he talked me into staying, and I</p> <p>7 waited four weeks and gave him a two-week notice and I</p> <p>8 left.</p> <p>9 Q. Okay. So you first really thought about</p> <p>10 leaving about six weeks before you actually left;</p> <p>11 right?</p> <p>12 A. Right.</p> <p>13 Q. And so I happen to remember that your last</p> <p>14 day was October 14th or 15th, something like that?</p> <p>15 A. I don't remember.</p> <p>16 Q. So I'm saying that -- I'm guessing that</p> <p>17 about the first of September is when you first thought</p> <p>18 you would leave OfficeMax; right?</p> <p>19 MR. PALITZ: Objection.</p> <p>20 A. I don't remember.</p> <p>21 Q. And when was InkTech up and running for</p> <p>22 business?</p> <p>23 MR. PALITZ: Objection.</p> <p>24 A. I don't remember the exact date, but</p> <p>25 October 31st or November 1st.</p>

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<p style="text-align: right;">Page 37</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 Q. Okay. So you had to lease a space and --</p> <p>3 A. No.</p> <p>4 Q. So you started without a space at first?</p> <p>5 A. Well, we started with a space, but I</p> <p>6 didn't have to lease it. It was -- my family already</p> <p>7 had the space.</p> <p>8 Q. Okay. Got it.</p> <p>9 So were you making some preparations to go</p> <p>10 into the InkTech business during your last weeks of</p> <p>11 employment with OfficeMax?</p> <p>12 A. I don't really recall exactly when we made</p> <p>13 preparations to go into InkTech.</p> <p>14 Q. Can you estimate for me?</p> <p>15 A. It was a fast process, you know. When we</p> <p>16 left OfficeMax, it was a fast process.</p> <p>17 Q. Who's "we"?</p> <p>18 A. My business partner Mike. He was the</p> <p>19 operations manager at OfficeMax.</p> <p>20 Q. Okay. So is it operations manager or</p> <p>21 operations supervisor? Do you remember?</p> <p>22 A. I think they call them manager.</p> <p>23 Q. Okay. And so you and Mike kind of decided</p> <p>24 together that you would leave and form this business?</p> <p>25 A. Yeah.</p>	<p style="text-align: right;">Page 39</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 A. No. They were very alike.</p> <p>3 Q. Okay. They were essentially twins in your</p> <p>4 mind?</p> <p>5 A. I don't know about, you know, any of that.</p> <p>6 I'm just saying they were alike.</p> <p>7 Q. How long had he worked at OfficeMax?</p> <p>8 A. I'm not 100 percent sure, but a few years,</p> <p>9 I believe.</p> <p>10 Q. How long had he been serving as the</p> <p>11 operations supervisor or manager for the store?</p> <p>12 A. That position was created recent, so not</p> <p>13 long.</p> <p>14 Q. Can you approximate for me? Was it</p> <p>15 sometime in 2011?</p> <p>16 A. Yeah. Right. Because that's when I</p> <p>17 started with the company.</p> <p>18 Q. And do you recall actually interviewing</p> <p>19 him for that role?</p> <p>20 A. No.</p> <p>21 Q. Did you recommended him for that role?</p> <p>22 A. No.</p> <p>23 Q. Who selected him for that role?</p> <p>24 MR. PALITZ: Objection.</p> <p>25 A. Josh did.</p>
<p style="text-align: right;">Page 38</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 Q. Okay. When did you first have those</p> <p>3 discussions with Mike?</p> <p>4 A. When I was getting ready to leave, you</p> <p>5 know, we had discussions about it just jokingly. And,</p> <p>6 you know, we had the ability to get the money to do</p> <p>7 it, so we decided to do it.</p> <p>8 Q. Now, I'll ask more questions about this</p> <p>9 later, but what exactly was Mike's job? What did Mike</p> <p>10 do at the store --</p> <p>11 A. At OfficeMax?</p> <p>12 Q. -- as operations -- at OfficeMax as the</p> <p>13 operations supervisor or manager, whichever it was</p> <p>14 called?</p> <p>15 A. Right. He did pretty much the same duties</p> <p>16 that I did. I would say 100 percent the same duties</p> <p>17 and, you know, I counted down cash drawers; opened and</p> <p>18 closed the store; had a key code for Stanley, which is</p> <p>19 a security firm that guards the facility -- not guards</p> <p>20 it, but, you know, electronically. And, you know, so</p> <p>21 he did all the day-to-day stuff, you know, and</p> <p>22 stocking shelves and everything else, so...</p> <p>23 Q. Can you think of any differences between</p> <p>24 his role or his responsibility and yours during the</p> <p>25 time that he and you worked there?</p>	<p style="text-align: right;">Page 40</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 Q. Did Josh have any discussions with you at</p> <p>3 all about your opinion on whether Mike was a good</p> <p>4 candidate for that role?</p> <p>5 A. Josh and I very rarely had any discussions</p> <p>6 because, you know, he basically made all the decisions</p> <p>7 at the store. I would say, you know, almost all of</p> <p>8 them -- or all of them, yeah. So, no, we didn't have</p> <p>9 any discussion about that.</p> <p>10 Q. Not a word was spoken between you and he</p> <p>11 about whether Mike was a good candidate for that role?</p> <p>12 MR. PALITZ: Objection.</p> <p>13 A. Not that I can recall.</p> <p>14 Q. So you're not ruling it out. You just</p> <p>15 don't remember it; is that right?</p> <p>16 MR. PALITZ: Objection. Asked and</p> <p>17 answered.</p> <p>18 You can answer.</p> <p>19 A. I don't recall for sure. I mean, I can't</p> <p>20 remember every word spoken ever. So I guess you could</p> <p>21 rule out everything that I don't know. Right?</p> <p>22 I mean, I don't know for sure if Josh had</p> <p>23 mentioned to me "should I hire him," but, I mean, I</p> <p>24 don't know.</p> <p>25 Q. Okay. Do you know whether anyone besides</p>

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<p style="text-align: right;">Page 49</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 stuff.</p> <p>3 Q. Okay. And it says: Retail store and 25</p> <p>4 employees.</p> <p>5 Is that about the number of employees that</p> <p>6 worked at Store 898?</p> <p>7 A. I never had a firm count on them simply</p> <p>8 because I just, you know, they were in and out, and I</p> <p>9 was there for so long, I just had no idea. But</p> <p>10 roughly.</p> <p>11 Q. And to be fair, that would include a lot</p> <p>12 of part-timers and a handful of full timers; right?</p> <p>13 A. Everyone, roughly, yep.</p> <p>14 Q. So if one were to take a snapshot at any</p> <p>15 given period of time over the year that you worked in</p> <p>16 Store 898, there would be more or less 25 people on</p> <p>17 the payroll; right?</p> <p>18 A. Roughly, yeah.</p> <p>19 Q. And you say here: I oversaw aspects of</p> <p>20 the business.</p> <p>21 What did you mean by those words?</p> <p>22 A. Well, those words are meaningless. You</p> <p>23 know, I embellished and, you know, so I'm under oath</p> <p>24 now and I'm telling you that that is not true.</p> <p>25 Q. Well, did you oversee any aspects of the</p>	<p style="text-align: right;">Page 51</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 including, you know, stocking shelves and unloading</p> <p>3 trucks and things of that nature.</p> <p>4 Q. And I appreciate your statement, and you</p> <p>5 have made it two or three times now, that you saw your</p> <p>6 job as being no different than the operation</p> <p>7 supervisor or manager. But it kind of begs the</p> <p>8 question if I'm trying to figure out what aspects of</p> <p>9 the business you oversaw.</p> <p>10 MR. PALITZ: Objection. Asked and</p> <p>11 answered.</p> <p>12 Q. And are there any others that you have not</p> <p>13 shared with us?</p> <p>14 A. No.</p> <p>15 Q. Now, you say that you did scheduling based</p> <p>16 on forecasted sales.</p> <p>17 Did you do scheduling at the store?</p> <p>18 A. Very, very seldomly. Very, very seldomly</p> <p>19 and it was required or asked upon by people above me</p> <p>20 like a store manager. Very rarely.</p> <p>21 Q. So what's your definition of "very</p> <p>22 rarely"?</p> <p>23 A. Maybe -- again, I'm not sure the exact</p> <p>24 number. Maybe four times. And every time I did it,</p> <p>25 it was either changed or revised by the store manager.</p>
<p style="text-align: right;">Page 50</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 business?</p> <p>3 A. I didn't oversee anything, no.</p> <p>4 Q. What was the business?</p> <p>5 A. What was the business? What does that</p> <p>6 mean?</p> <p>7 Q. It says: I oversaw all aspects of the</p> <p>8 business.</p> <p>9 What was the business?</p> <p>10 A. The business, referring to OfficeMax as a</p> <p>11 whole, would be that. You know, it's under that job</p> <p>12 description.</p> <p>13 Q. Did you oversee any aspect of the business</p> <p>14 besides stocking shelves and menial tasks?</p> <p>15 MR. PALITZ: Objection. Asked and</p> <p>16 answered.</p> <p>17 A. No, I didn't oversee any aspects of the</p> <p>18 business.</p> <p>19 Again, the operations manager that was an</p> <p>20 hourly associate did every aspect of the business that</p> <p>21 I was able to do and did do. So, again, the only</p> <p>22 thing that would be overseen was opening the store</p> <p>23 perhaps, or counting down the cash drawers at the end</p> <p>24 of the night. Other than that, there wasn't really</p> <p>25 anything that I did differently. And then --</p>	<p style="text-align: right;">Page 52</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 So it was never my total and at-most schedule. It was</p> <p>3 his. You know, he would come in the next day and</p> <p>4 revise it.</p> <p>5 Q. He would make changes to the schedule that</p> <p>6 you did?</p> <p>7 A. Right.</p> <p>8 Q. Do you know why he made the changes?</p> <p>9 MR. PALITZ: Objection.</p> <p>10 A. I don't know why he did what he did.</p> <p>11 Q. Did you ask him why he made the changes?</p> <p>12 A. He would just say, you know, "This isn't</p> <p>13 the way I want it," or something, and leave it at that</p> <p>14 and then tell me to go do something.</p> <p>15 Q. Now, are you remembering that conversation</p> <p>16 or --</p> <p>17 A. Not vividly. And it's not really</p> <p>18 speculation. It happened a few times every time I did</p> <p>19 it. So he'd be like -- he'd just look at it and be</p> <p>20 like, uh, and he'd just start writing on it. And he'd</p> <p>21 say: "Hey, can you go work on this planogram," or</p> <p>22 something like that. And then I would leave.</p> <p>23 Q. Now, when you did do the scheduling, did</p> <p>24 you try to schedule based on forecasted sales?</p> <p>25 A. No. He would give us -- again, that's</p>

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<p style="text-align: right;">Page 65</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 Q. I'm not -- I don't mean the exact words.</p> <p>3 A. Well, I've never said that, so...</p> <p>4 Q. Okay. And you're certain?</p> <p>5 A. It's a long time ago. Again, I've said</p> <p>6 good things about Joe.</p> <p>7 Q. Okay. You've mentioned the store walk.</p> <p>8 A. Right.</p> <p>9 Q. And, in essence, it's you and he walking</p> <p>10 around the store, paying attention to lots of little</p> <p>11 things; right?</p> <p>12 MR. PALITZ: Objection.</p> <p>13 A. Mainly -- yeah, cleaning stuff.</p> <p>14 Q. What besides cleaning would you talk about</p> <p>15 on the store walks with Joe Nosko?</p> <p>16 MR. PALITZ: Asked and answered.</p> <p>17 Objection.</p> <p>18 A. Yeah, I'm not certain. I don't know what</p> <p>19 you're saying.</p> <p>20 Q. Well, did he ask, you know, about any</p> <p>21 employee issues or whether you were having any</p> <p>22 problems?</p> <p>23 A. No. Basically, the only time we talked</p> <p>24 about problems was when I was ready to -- you know, I</p> <p>25 was tired of being a stock -- glorified stock boy.</p>	<p style="text-align: right;">Page 67</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 the -- again, this is through Joe I heard this. It</p> <p>3 wasn't even something that I was apparently aware of</p> <p>4 or on site for.</p> <p>5 The ImPress manager had a copyright</p> <p>6 picture copied a few times, and he had mentioned, you</p> <p>7 know, customer service -- which a little caught me off</p> <p>8 guard -- but he told me the situation and he said,</p> <p>9 "Well, let the guy sue us. He doesn't have the money</p> <p>10 to take us to court," and that put a little bad taste</p> <p>11 in my mouth. Customer service. If that's a value, I</p> <p>12 didn't feel like that was a good way to handle it,</p> <p>13 so...</p> <p>14 Q. So what did you tell him?</p> <p>15 A. I didn't tell him much. I mean, he's the</p> <p>16 guy in charge, you know, so I was a little, you know,</p> <p>17 taken back by it, and then I just left it like that.</p> <p>18 Q. Okay. So isn't there, in fact, a form or</p> <p>19 a format that is used when a district manager does a</p> <p>20 tour of the store?</p> <p>21 A. I'm not sure on that. I don't think I've</p> <p>22 ever seen one, and if I have, I don't recall. When</p> <p>23 Joe and I walked the store, it was legal-pad base to</p> <p>24 straighten things up.</p> <p>25 Q. Okay. And you would then write down what</p>
<p style="text-align: right;">Page 66</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 Q. Did he talk about any sales strategies,</p> <p>3 any approaches to sales, about the financial</p> <p>4 performance of the store?</p> <p>5 A. Not that I can recall.</p> <p>6 Q. You're not saying it didn't happen, you're</p> <p>7 just saying you don't remember it --</p> <p>8 A. I don't recall.</p> <p>9 Q. -- is that right?</p> <p>10 After the store walk, you would then have</p> <p>11 a list of things that needed to get done?</p> <p>12 A. Right.</p> <p>13 Q. And your memory is that all of the things</p> <p>14 on that list amounted to tasks of cleaning or</p> <p>15 stocking; is that right?</p> <p>16 A. Physical stuff, yeah. He was very into</p> <p>17 cleanliness, which is fine, but, yeah.</p> <p>18 It's -- you know, I don't think our store</p> <p>19 struggled at all as far as anything, you know, sales.</p> <p>20 The associates -- everyone was good at sales, so he</p> <p>21 never talked about that, to me anyways.</p> <p>22 Q. Was he also good about -- was OfficeMax</p> <p>23 also big on serving the customer?</p> <p>24 A. It wasn't really brought up in our</p> <p>25 discussions much. You know, there was a time where</p>	<p style="text-align: right;">Page 68</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 needed to get done?</p> <p>3 A. Everything he told me to write down.</p> <p>4 Correct.</p> <p>5 Q. And it was your job to get them done;</p> <p>6 right?</p> <p>7 A. Get everything done.</p> <p>8 Q. Yeah. Now, was it your job necessarily to</p> <p>9 do it yourself or to decide who was going to do what</p> <p>10 in getting them done?</p> <p>11 A. Yeah. It was torn really. When I was</p> <p>12 there alone, that was the only real time that I had,</p> <p>13 you know, the ability to give direction of any sorts.</p> <p>14 And it was direction basically by Joe, and he would</p> <p>15 delegate it when we were walking the store and say,</p> <p>16 "This would be a good job for this person" or "This</p> <p>17 would be a good job for this person."</p> <p>18 So it wasn't 100 percent my decision. But</p> <p>19 we did, you know, we walked the store. And he's been</p> <p>20 in the business a long time, so I looked up to him a</p> <p>21 little bit on how to do it. So I followed his</p> <p>22 direction on that.</p> <p>23 Q. Well -- and you were new to the store at</p> <p>24 the time; right?</p> <p>25 A. Sure. Sure.</p>

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<p style="text-align: right;">Page 73</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 in and interviewed was hired. Then Colleen was like,</p> <p>3 "Well, Bob, interview her, see if she's good." And</p> <p>4 then Bob interviewed her and then hired her.</p> <p>5 Q. Are you saying that your opinion was never</p> <p>6 looked at in making decisions about who to hire or who</p> <p>7 not?</p> <p>8 A. I don't know if it was looked at or not,</p> <p>9 you know. It wasn't really asked upon, if, you know,</p> <p>10 what I thought, you know. They would say, you know,</p> <p>11 bring her in, we'll have an interview, or bring them</p> <p>12 in and we'll have an interview, see what it's like.</p> <p>13 I'll sit in on it with you.</p> <p>14 Q. We'll go into that in detail.</p> <p>15 How would you describe your working</p> <p>16 relationship with Colleen?</p> <p>17 A. I thought it was okay.</p> <p>18 Q. Ever have any friction with her?</p> <p>19 A. I don't think so.</p> <p>20 Q. Did you find her to be helpful and</p> <p>21 supportive in your role as assistant manager?</p> <p>22 A. She would handle that sort of stuff in a</p> <p>23 timely fashion.</p> <p>24 Q. And would she provide you ideas and advice</p> <p>25 on how you could handle your end of that job?</p>	<p style="text-align: right;">Page 75</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 believe his name was. He was the representative for</p> <p>3 OfficeMax that handled loss prevention, and he found</p> <p>4 that one of the employees; cashier, stock girl,</p> <p>5 whatever it may be, was running MaxPerks -- which is</p> <p>6 like a Wegmans shopping card which would calculate</p> <p>7 points and get rewards on it -- kept scanning it to</p> <p>8 earn money or whatever it was, and it was going to</p> <p>9 that address, and it was in her boyfriend's name.</p> <p>10 Well, he caught all that.</p> <p>11 He called me and said, "I need you to sit</p> <p>12 in on a conference call for Colleen and I for this</p> <p>13 girl that worked there." Okay. So I basically had no</p> <p>14 idea what was going on, but I needed to sit in on</p> <p>15 there as a witness, and I followed their direction to</p> <p>16 do it. And Colleen said, "We should let her go," and</p> <p>17 I had to sign it.</p> <p>18 So I guess maybe that could be interpreted</p> <p>19 as taking her advice maybe? I don't know. But I</p> <p>20 guess that would be the only time that I recall.</p> <p>21 Q. Yeah. I've seen that paperwork. We'll</p> <p>22 talk about that. But before that I want to go back</p> <p>23 and reask a question, because I'm not sure what your</p> <p>24 answer was.</p> <p>25 Is it your testimony that there was no</p>
<p style="text-align: right;">Page 74</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 A. I didn't really talk to her that much</p> <p>3 about any sort of thing about that. My time with</p> <p>4 Colleen was spent over a short period of time when I</p> <p>5 was the only one at the store.</p> <p>6 Q. Did she ever treat you unfairly?</p> <p>7 A. I wouldn't say.</p> <p>8 Q. Did you ever find her not to be open to</p> <p>9 your opinions, ideas and concerns?</p> <p>10 MR. PALITZ: Objection.</p> <p>11 A. Yeah. Again, we didn't really talk that</p> <p>12 much about any of my ideas or opinions or concerns.</p> <p>13 You know, I was only talking to her for that period of</p> <p>14 time where I -- well, number 1, when I was</p> <p>15 interviewing for the job before I started. And then</p> <p>16 when I had -- you know, when I was the only one at the</p> <p>17 store.</p> <p>18 Q. So it's your testimony that over the</p> <p>19 course of all encounters that you had with Colleen,</p> <p>20 there was no time when you shared an opinion, idea or</p> <p>21 concern with her? Is that your testimony?</p> <p>22 MR. PALITZ: Objection.</p> <p>23 A. Again, I'm not completely sure on that.</p> <p>24 What I do know, though, there was one time where I was</p> <p>25 contacted by -- what's his name? Greg Bleakly I</p>	<p style="text-align: right;">Page 76</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 time when you shared an opinion, idea or concern with</p> <p>3 Colleen about an HR issue?</p> <p>4 MR. PALITZ: Objection. Asked and</p> <p>5 answered.</p> <p>6 A. I mean, I don't know, to be real honest.</p> <p>7 I mean --</p> <p>8 Q. Well, we want you to be real honest.</p> <p>9 A. Yeah, obviously; right. I was thinking of</p> <p>10 a time that -- this is the only other time I guess I</p> <p>11 remember.</p> <p>12 But when I first started there -- and</p> <p>13 that's why everybody left, basically, or resigned or</p> <p>14 quit, or whatever they did -- when I found -- we had</p> <p>15 to print off computer counts, whether it be the sales</p> <p>16 specialists, ops, or whatever, we'd go in the computer</p> <p>17 place and count and make sure all the high-end items</p> <p>18 were there correct in inventory.</p> <p>19 So one of my first days in the store, you</p> <p>20 know, the store manager wasn't there, so I had to do</p> <p>21 these counts. Okay. So I go in there, and I start</p> <p>22 counting, and then I go out and I count the displays</p> <p>23 and we were a computer or two short -- I can't</p> <p>24 remember the exact amount -- but it was short. And I</p> <p>25 couldn't find them anywhere.</p>

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<p style="text-align: right;">Page 105</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 to do price overrides, have a security code, and open</p> <p>3 and close the store, and count cash drawers and</p> <p>4 everything that I did as an assistant manager at</p> <p>5 OfficeMax, and he told me, yes, he did, even as a tech</p> <p>6 specialist.</p> <p>7 And he also told me that as far as</p> <p>8 training employees, it was done by the furniture</p> <p>9 specialist and it was done by him as a tech</p> <p>10 specialist, and they would take the employees and show</p> <p>11 them around the store and do all that sort of stuff</p> <p>12 with, you know, teaching them laptops or teaching them</p> <p>13 about the furniture. Other than that, you know, done</p> <p>14 on the computer.</p> <p>15 So those are the types of things I asked</p> <p>16 him about to see if it was similar before I had come</p> <p>17 on, which it was. So that's, you know, a big thing I</p> <p>18 was wondering about.</p> <p>19 Q. Did he tell you whether anyone would</p> <p>20 oversee him or the furniture specialist in their</p> <p>21 training of others?</p> <p>22 A. He told me that the assistant store</p> <p>23 manager before me did more planograms and stocking</p> <p>24 shelves than I did, which was like all of my time.</p> <p>25 But that's what he focused on.</p>	<p style="text-align: right;">Page 107</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 A. Huh?</p> <p>3 Q. Christian resigned to you, didn't he?</p> <p>4 A. No, he didn't. He wrote a letter and set</p> <p>5 it on the desk for Josh to get when he came in.</p> <p>6 Q. Did you have conversations with Christian</p> <p>7 about his resignation before --</p> <p>8 A. I didn't.</p> <p>9 Q. -- you saw the letter?</p> <p>10 A. I said, you know, "If that's what you want</p> <p>11 to do, leave a note for Josh, you know, he'll handle</p> <p>12 it."</p> <p>13 Q. So he apparently came to you, said he was</p> <p>14 going to resign --</p> <p>15 A. He was talking to other associates about</p> <p>16 resignation and I caught wind of it. And then he</p> <p>17 pretty much came to me, and I told him, "The only</p> <p>18 thing I can tell you is write a letter and leave it on</p> <p>19 his desk for him."</p> <p>20 Q. So you talked to him about his</p> <p>21 resignation, and you advised him to write a letter and</p> <p>22 leave it on Josh's desk; is that right?</p> <p>23 A. I told him that's what I think would be,</p> <p>24 you know, the way to resign, sure. That's what I</p> <p>25 would assume.</p>
<p style="text-align: right;">Page 106</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 As far as him being trained, he told me</p> <p>3 there wasn't really much. He went to school for</p> <p>4 computer science, so he was already trained in the,</p> <p>5 like, laptops and things. So they just started him</p> <p>6 and said, "All right. Go ahead." So that's what he</p> <p>7 had remarked.</p> <p>8 Q. Have you had any -- have you, yourself,</p> <p>9 had any conversation with any current or former</p> <p>10 OfficeMax employees about the subject matter of this</p> <p>11 lawsuit?</p> <p>12 A. Not that I can think of. I mean, you</p> <p>13 know, Christian is an old employee. He quit</p> <p>14 OfficeMax. He started his own business doing roof</p> <p>15 cleaning, but a...</p> <p>16 Q. Chris who?</p> <p>17 A. Hilgan. And he, you know...</p> <p>18 Q. He was a sales consultant?</p> <p>19 A. Maybe. I don't know if Josh -- if he</p> <p>20 promoted him to that or what the deal was, but I don't</p> <p>21 know what he was. I don't know what his title was.</p> <p>22 Q. He quit about the same time you did?</p> <p>23 A. Yeah.</p> <p>24 Q. In fact, Christian resigned to you, didn't</p> <p>25 he?</p>	<p style="text-align: right;">Page 108</p> <p>1 JEFFERY HEITZENRATER - BY MR. HUTTON</p> <p>2 Q. Mr. Heitzenrater, Christian resigned to</p> <p>3 you, didn't he?</p> <p>4 MR. PALITZ: Objection. Asked and</p> <p>5 answered.</p> <p>6 A. That's kind of a weird way to ask -- kind</p> <p>7 of made me feel awkward. I don't know if I can sit</p> <p>8 here with you. Please don't talk to me like that.</p> <p>9 He didn't resign to me. I just told you</p> <p>10 that. He wrote a letter and left it on the desk for</p> <p>11 Josh. If Josh crumpled it up and threw it in the</p> <p>12 corner, from what I remember, then I guess that would</p> <p>13 be resigning to me. But from my understanding, he</p> <p>14 wrote a letter to Josh to resign.</p> <p>15 Q. Let me rephrase it.</p> <p>16 Christian -- at least as of that date you</p> <p>17 were still the assistant store manager at 898; right?</p> <p>18 A. That's what my title was.</p> <p>19 Q. And on the day in question, you were</p> <p>20 working in the store and Josh was not; correct?</p> <p>21 A. Well, Josh was working that day, but he</p> <p>22 had left.</p> <p>23 Q. Okay. Christian came to you and said, "I</p> <p>24 intend to resign my employment. How should I go about</p> <p>25 it?" Did he say that to you?</p>